

**DEPARTMENTS OF COMMERCE, JUSTICE, AND  
STATE, THE JUDICIARY, AND RELATED AGEN-  
CIES APPROPRIATIONS FOR FISCAL YEAR 1998**

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**HEARINGS**

BEFORE A

SUBCOMMITTEE OF THE

COMMITTEE ON APPROPRIATIONS

UNITED STATES SENATE

ONE HUNDRED FIFTH CONGRESS

FIRST SESSION

ON

**H.R. 2267/S. 1022**

AN ACT MAKING APPROPRIATIONS FOR THE DEPARTMENTS OF COM-  
MERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGEN-  
CIES FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 1998, AND FOR  
OTHER PURPOSES

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**Department of Commerce  
Department of Justice  
Department of State  
Federal Communications Commission  
Nondepartmental witnesses  
Securities and Exchange Commission  
Small Business Administration  
The judiciary  
United Nations**

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Printed for the use of the Committee on Appropriations

Available via the World Wide Web: <http://www.access.gpo.gov/congress/senate>

U.S. GOVERNMENT PRINTING OFFICE

39-831 cc

WASHINGTON : 1998

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For sale by the U.S. Government Printing Office  
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402  
ISBN 0-16-056085-3

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**DEPARTMENTS OF COMMERCE, JUSTICE, AND  
STATE, THE JUDICIARY, AND RELATED  
AGENCIES APPROPRIATIONS FOR FISCAL  
YEAR 1998**

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**THURSDAY, MARCH 6, 1997**

U.S. SENATE,  
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,  
*Washington, DC.*

The subcommittee met at 2:04 p.m., in room S-146, the Capitol,  
Hon. Judd Gregg (chairman) presiding.

Present: Senators Gregg, Domenici, Campbell, Hollings, Bump-  
ers, Lautenberg, and Mikulski.

**DEPARTMENT OF STATE**

**SECRETARY OF STATE**

**STATEMENT OF HON. MADELEINE K. ALBRIGHT, SECRETARY OF  
STATE**

**OPENING REMARKS**

Senator GREGG. We'll call this hearing to order, and we obviously want to thank the Secretary for joining us. This is her first appearance before the committee as Secretary.

Of course, we had the pleasure of having a number of chances to meet with the Secretary when she was Ambassador, and it was always a privilege and a very worthwhile event for us.

I am going to withhold my opening statement, and I would hope that we could shorten our opening statements so that we can get on with the questions.

There are a couple of members who have expressed an interest in making opening statements, but I will not make mine.

Senator HOLLINGS. I agree with the distinguished gentleman. We'll just withhold them and file them for the record, and hear the Secretary.

Senator GREGG. The Senator from New Mexico asked for the opportunity to make a quick statement.

Senator DOMENICI. Excuse me, Madam Secretary. I wanted to share with all of you a request. I have pretty good evidence that a number of cases are being filed in the State district courts regarding an immigration issue that I think is rather deplorable.

And I was going to ask the chairman if he might have the staff investigate this and bring it to our meeting when we have the INS up here. Could I lay that before you in a minute here?

Senator GREGG. Absolutely.

Senator DOMENICI. Let me just tell you, we adopted a statute in 1990 to make it possible that an alien that's in America who became disabled or extremely sick and needed guardianship could go to court and have a court determine them to be in need of a guardian, and thus in need of foster care.

That would then permit that person, that alien, to get a green card and become a permanent resident. There is now evidence that the lawyers and families have found that this will apply to an 18-, 19-, or even 20-year-old student who is here going to school.

Before they have to go home, they file a petition saying that this alien is in need of a guardian and foster care. Believe it or not, district courts in America are determining that to be a fact, ex parte, with no advocacy. The courts are determining that by order that these aliens are entitled to a permanent green card.

I believe we're either in the middle of a burgeoning fraud, or we're catching it in its early stages. Nonetheless, to top it all off, we have a situation where a lawyer filed a petition for one that supposedly was entitled to be a ward, and thus have a guardian appointed, and thus be entitled to foster care, and thus get a green card permanently.

It was filed 8 days before the person arrived in America, then they arrived, were determined to be subject to this, and then they got a green card. All of this occurred 9 days before the person became 21 years of age, which would have disqualified them from the opportunity to do this.

So I would clearly think this is something very serious, and I would ask that we look into it, and ask that the immigration people tell us about it, and do a little investigating before they come, so they might suggest to us how we might fix this.

Senator GREGG. We'll do exactly that, Senator. I think you have obviously raised a very legitimate concern which is in the jurisdiction of this committee: one which we will pursue. The Immigration and Naturalization Service [INS], as you know, is becoming the bane of our existence. There have been a number of problems.

Senator DOMENICI. I thank you very much.

Senator CAMPBELL. Do you wish to ask unanimous consent for opening statements?

Senator GREGG. I would appreciate it.

Senator CAMPBELL. And then have the Secretary's comments, and go to questions?

Senator GREGG. That's my plan, unless somebody feels moved to have to make an opening statement, I would appreciate it if we could just submit them for the record.

Senator CAMPBELL. I'd just like to welcome here, by the way, Mr. Chairman, a former resident of Denver.

Senator MIKULSKI. Mr. Chairman, I, too, would like to place my opening statement into the record, and welcome with enthusiasm our Secretary of State, and look forward to working with you to make sure our State Department is as modern as our economy.

Senator LAUTENBERG. I, too, Mr. Chairman, would ask that my statement that commends the Secretary for her wonderful work, for the forward position she's put forth for our country, for the skills

she brings to the job. I would have said all of this in my statement, which I would like to include in the record as if read.

Senator GREGG. I appreciate that.

[The statement follows:]

PREPARED STATEMENT OF SENATOR FRANK R. LAUTENBERG

Madame Secretary, I am pleased to have the opportunity to join my colleagues in welcoming you to this subcommittee and to congratulate you publicly on your new post. I am sure we will be able to work together to maintain American leadership and diplomatic readiness as you have so correctly suggested should be our goals.

I agree with those goals completely, and am glad that the budget you have presented supports them by restoring some of the cuts of recent years.

I am glad, for example, that the State Department does not now anticipate any additional post closings or the need to reduce further the number of personnel. Without sufficient people and posts, the work of the Department cannot be done.

While it is my firm belief that all of the work of the State Department helps the citizens of this country, I note also that much of the Department's work directly helps U.S. citizens and businesses abroad—issuing passports and visas, assisting U.S. citizens in distress overseas, helping U.S. businesses deal with a foreign culture.

This, along with traditional diplomacy, is critical work that must be supported with adequate resources.

SECRETARY ALBRIGHT'S OPENING STATEMENT

Senator GREGG. Before we go to questions, what I would like to do is hear from the Secretary.

Secretary ALBRIGHT. Thank you, very much, Mr. Chairman. I'm very glad to be with you and members of the subcommittee.

As you have said, this is really the first time I am here in my new capacity. I think we were able to develop a really good relationship in our previous dealings, and now we have a chance to broaden the dialog, and I am really looking forward to it.

Our ability to work together successfully matters because this subcommittee really does provide many of the resources by which American interests are protected, and American leadership is sustained. This matters because in our era we are deeply affected by events overseas.

I have my testimony here, my statement, divided into two parts, basically where I can give you an overview of the types of issues that we are dealing with, and then get more specifically into the resource question and how they link up.

Our workers and business people compete in a global marketplace. Our citizens travel, our students are measured against those from around the world, our borders are vulnerable to illegal immigrants, drugs, pollution, and disease.

And our children will do better and be safer in a world where nations are working together to set high standards, contain conflict, and enforce the rule of law. It was with these considerations in mind that I left Washington last month for my first trip overseas as Secretary of State. I think that the message that I was giving there is important to be heard here also.

In Europe I discussed a variety of issues with our key allies, including the North Atlantic Treaty Organization's [NATO] plan to invite a number of Europe's new democracies to begin talks about joining the alliance. Today, 4 months prior to the summit in Madrid, our alliance is united.

NATO will continue its process of internal adaptation. We will accept new members, and keep open the door to future membership. We will coordinate with all of Europe's democracies. We will develop an enhanced relationship with the Ukraine, and we will strive to forge a long-term strategic partnership with Russia. In this way we will ensure NATO's continued role as a mighty instrument for peace, stability, and freedom throughout the continent.

In Moscow, I emphasized to the Russian leaders that just as they have created a new Russia, we have created a new NATO. The new NATO is not arrayed against any country. It is a force for democracy and for integration.

Russia's own security will be enhanced in a Europe without walls, with a transformed NATO as its partner. During my talks with President Yeltsin and Russian Foreign Minister Primakov, I was able to outline the concrete possibilities of such a partnership, and I very much welcome President Yeltsin's subsequent statement that he will seek to make progress during the summit with President Clinton in Helsinki later this month.

In Europe, the central question we face is whether we have learned the right lessons from history. The same is true in Asia, where much depends on whether choices are based on past suspicion or current hope.

The message I conveyed during my trip is that America wants to build a secure and peaceful future for Asia and the Pacific. I reaffirmed our strong security relationships with our key allies, Japan and the Republic of Korea, and I emphasized the importance of proceeding with the agreed framework that has frozen and will ultimately dismantle North Korea's nuclear weapons program.

I discussed the President's proposal for our party peace talks concerning the future of the Korean Peninsula. A briefing on this subject in which both Koreas participated was held yesterday in New York. I also discussed our decision to contribute emergency food relief to the starving people of North Korea.

During my meetings with the Chinese leaders, we reviewed a broad range of issues, including nonproliferation, human rights, trade, Taiwan, and the future of Hong Kong. My visit, and China's willingness to receive me, despite the death of Deng Xiaoping, reflects a mutual determination to maintain our strategic dialog.

Our goal is to identify and build on areas of cooperation, while seeking through candid discussion to narrow differences. By so doing, we hope to develop more extensive areas of common ground, and thereby serve the interests of both countries and the world.

Although our interests demand that we direct our attention frequently to Europe and Asia, we cannot and are not neglecting our responsibilities elsewhere. For example, we're working with regional leaders and the United Nations to find a political solution to ease the ongoing humanitarian crisis in Zaire.

In the wake of the President's decision to certify Mexico's cooperation in the drug war, I am working with the Attorney General and Director McCaffrey to encourage further progress in that war, both short term and long term. And I recognize that there are those who disagree with the President's decision, but I believe it to be the right one.

President Zedillo is fighting back against the corruption that has undermined the antinarcotics effort in his country. Our focus now must not be on unproductive efforts to allocate blame, but on strategies to overcome problems. In this effort, we will be pleased to consult with Congress, and we welcome congressional support.

Finally, with regard to the Arab-Israeli peace process, we are working closely with the Government of Israel, the Palestinians, and others in the region to sustain the progress generated by the Hebron Agreement.

The recent visits of Prime Minister Netanyahu and Chairman Arafat, and the upcoming visits of President Mubarak and King Hussein reflect the vital role that America plays in this effort. And in that role, we will continue to back those who believe in peace, and continue to oppose vigorously those who seek to disrupt peace through violence or terror.

Mr. Chairman, the United States has important economic, security, political, and humanitarian interests on every continent, but if we are to have the resources required to protect those interests, we will need your help in maintaining our diplomatic readiness. Accordingly, I urge your strong support for the President's request for funding for fiscal year 1998, beginning with State Department operations, where we are requesting roughly a 4-percent increase from this year's level.

As members of this subcommittee know, although our workload in priority areas has increased, and overseas inflation has eroded our buying power, funding for our Embassies and consulates has been flat. We have done our best to manage this squeeze by streamlining operations, cutting jobs, postponing repairs, and closing overseas posts.

We have also recognized that if we are going to work smaller, we have got to work smarter. To this end, we have reduced dramatically the time required for an American to obtain a passport.

We have developed an improved model for overseas staffing. We are redesigning our worldwide logistics operations to provide materials and services faster, better, and cheaper.

We're proposing a plan for the State Department to retain the fees we generate, and we have put in place a system to promote equitable sharing among Federal agencies of overseas costs.

But sound management requires investment and modernization as well as efficiency. The small increase requested by the President this year will help us keep pace with inflation, modernize our technology, integrate environmental concerns, and make a small down-payment on repairs to our dilapidated facilities in China. Even so, we will not have the resources we need to improve many other sub-standard facilities.

Mr. Chairman, as I have told State Department employees, helping to design and implement American foreign policy is not just another career choice. It's a service to America, as important and often as risky as service within our Armed Forces. It requires a commitment to American interests and ideals, and it needs to be done with excellence and spine.

Let us not forget that we depend on our diplomats to negotiate the arms control agreements that keep us safe from the spread of

nuclear weapons. We ask them to help open new markets, and assure fair treatment for American businesses.

We rely on them to build relationships that enable us to protect our citizens from the scourge of drugs, the plague of crime, and the threat of terror. We expect them to see behind the claims of dictators and report the truths about human rights.

We count on them to assist Americans who are injured, or otherwise need help overseas, and we require them to provide support to the other Federal agencies, from Defense to the FBI, that also promote American interests around the world.

There is no more important part of my message to you today than that the people who do America's work abroad need and deserve the support of Congress—the representatives of our people here at home.

And I also ask your support for the President's request for our participation in international organizations. In my previous capacity, Mr. Chairman, we had an opportunity last year to discuss the CIO account, which I hope you agree serves a wide range of American interests, and I will not take time to enumerate those now.

The real policy question we face is not whether the United Nations and its agencies work for us—they do—but whether we can make them work better. And that is why we have repeatedly stressed the need for reform.

On this subject, Mr. Chairman, I hope you will agree we've come a long way. We are far from satisfied, but I think that it's fair to say that there has been more United Nations' reform in the last 4 years than in the previous 40.

During this period, the United Nations' new inspector general has shown growing independence in exposing inefficiency and waste. The United Nations has lived within a no-growth budget, and we believe it will continue to do so.

U.N. staffing has declined. New peacekeeping operations are far less frequent and more successful. An informal moratorium on U.N. global conferences is being observed, and our reform mantra of consolidation, accountability, prioritization, and fiscal discipline is having an impact throughout the U.N. system.

Now, this progress did not come easy. Our support for reform does not go down well with those whose priorities differ from our own. Moreover, our policy of paying assessments late, coupled with our arrears, has alienated both supporters and opponents of reform.

Last year, we proposed a 5-year plan for paying arrears, with the understanding that the payments would be tied to specific reforms. I think in retrospect that that proposal was flawed. It didn't provide much leverage with U.N. members. And we did not come out a winner with Congress.

The \$50 million we received in arrears last year for U.N. peacekeeping, while welcome, was more than offset by an \$85.6 million shortfall in appropriations for the "Contributions to international organizations" account. Our goal is to get out of the hole, not dig it deeper still.

That is why the President has proposed a plan this year that would fully clear our payable arrears, while maximizing prospects for achieving our other U.N. priorities.

If this request is approved, we would have far greater leverage in negotiating the budgets of the international organizations to which we belong. And we would leave a far better chance of negotiating reductions in our share of these budgets and making further progress on reform.

This is a win/win/win proposition. By paying our arrears, we would get America out of debt. By reducing future assessments, we would keep America out of debt. By providing incentives for reform, we would enable these organizations to do more with less.

In the days ahead, I would like to work with you and your colleagues to implement the President's plan. Our continued leadership, within the international organizations, depends upon it, our principles require it, our interests demand it, and our budget allows it.

Mr. Chairman, our request this year also includes funds to meet our current assessments to international organizations, and our anticipated requirements for U.N. peacekeeping.

As we discussed before, I appreciate your desire to be consulted about prospective peacekeeping operations. We need your understanding and support so that operations will be effective, and so that we can pay our assessments.

In that spirit, let me mention one possibility. Although progress has been made in Bosnia, we are faced now with the challenge of implementing the recent decision putting the city of Brcko under international supervision for 1 year. Police monitoring will be a key element, and we will be talking with you further about the likely expansion of the U.N. civilian police mission in Bosnia to handle this task.

Mr. Chairman, I am optimistic, based on my earlier meetings with you, and the conversations I've had with many Senators, that we have a tremendous opportunity to work together. We may have differences on timing and tactics on some issues, but I see a widespread agreement on our central goals. We agree on the need to build a Europe, whole and free, and an Asia Pacific community. We agree on the need to create an ever expanding global economy. And we agree on the need to fight back hard against threats to our security and seize the opportunities for peace.

And we agree, most of all, on the need for America to remain true to its principles, defending freedom, promoting human dignity, and keeping commitments.

#### PREPARED STATEMENT

And so I am looking forward very much, Mr. Chairman, and members of the subcommittee, in working with you, not only to defend the principles of America now, but to lay the foundations for the next American century.

I would be delighted to answer questions.

[The statement follows:]

#### PREPARED STATEMENT OF MADELEINE K. ALBRIGHT

Mr. Chairman and members of the Subcommittee, it is a pleasure to appear before you for the first time in my new capacity. As Ambassador to the United Nations, I benefited greatly from our constructive dialogue in the past. I look forward now to continuing our relationship with the same candor and commitment—and to

working with you on an even broader array of challenges facing our nation and the world.

In his State of the Union address last month, the President said that “to prepare America for the 21st Century, we must master the forces of change and keep American leadership strong and sure for an uncharted time.”

Thanks to the President’s personal engagement, the hard work of Secretary Christopher, and the bipartisan support of Members of Congress, we undertake this challenge with the wind at our backs. Today, our nation is respected and at peace. Our alliances are vigorous. Our economy is robust.

And the ideals enshrined in the American Constitution more than 200 years ago still inspire those who have won, and those who seek, a place in the constantly-expanding domain of freedom.

All this is no accident. And its continuation is by no means inevitable. The preservation of peace, the growth of prosperity and the spread of democracy must be sustained as they were created—by American leadership.

That imposes a responsibility upon all of us, for the accounts under the jurisdiction of this subcommittee provide many of the resources by which American interests are protected and American leadership is maintained.

This matters because, in our era, we are all deeply affected by events overseas. Our workers and businesspeople compete in a global marketplace. Our citizens travel. Our students are measured against those from around the world. Our borders are vulnerable to illegal immigrants, drugs, pollution and disease. And our children will do better and be safer in a world where nations are working together to set high standards, contain conflict and enforce the rule of law.

It was with these considerations in mind, Mr. Chairman, that I embarked last month on my first overseas trip as Secretary of State.

In Europe, my discussions focused on preparations for the summit that President Clinton and the leaders of NATO will attend this July in Madrid. That summit will mark another milestone in the post-Cold War transformation of NATO by inviting a number of Europe’s new democracies to begin talks about joining our alliance.

Our goal is to help NATO do now for Europe’s east what NATO did fifty years ago for Europe’s west: to integrate new democracies, eliminate old hatreds, provide confidence in economic recovery, and deter conflict.

As my visits to Rome, Bonn, Paris, London and NATO Headquarters in Brussels gave evidence, the alliance is united. NATO will continue its process of internal adaptation. We will accept new members, and keep open the door to future membership. We will operate in partnership with all of Europe’s democracies. We will develop an enhanced relationship with Ukraine. We will strive to forge a long-term strategic partnership with Russia. And we will coordinate with other regional institutions, including a strengthened OSCE, the European Union, the Council of Europe and the Western European Union.

In this way, we will ensure NATO’s continued role as a mighty instrument for peace, stability and freedom throughout Europe.

Such an outcome would serve the interests of every country—including Russia. In Moscow, I emphasized to Russian leaders that, just as they have created a new Russia, we have created a new NATO. The new NATO is not arrayed against any country; it is a force for democracy, and for integration. Russia’s own security will be enhanced in a Europe without walls, with a transformed NATO as its partner.

During my talks with President Yeltsin and Russian Foreign Minister Primakov, I was able to outline the concrete possibilities of such a partnership. I very much welcome President Yeltsin’s subsequent statement that he will seek to make progress during his summit meetings with President Clinton in Helsinki later this month.

The issue of NATO adaptation reminds us of the broader interests we share not only with our traditional allies in the west, but with a democratic Russia, Ukraine, the other New Independent States, the Baltics and the new democracies of Central Europe. The continued strengthening of democratic institutions and values throughout this region is vital to our future and must be a defining characteristic of our age.

We should never forget that European divisions drew our people into two world wars and one Cold War this century. We have an obligation to ourselves and to our children to do all we can to sustain progress towards security cooperation, economic integration, political reform and victory over the forces of terrorism, corruption and crime.

In Europe, the central question we face is whether we have learned the right lessons from history. To secure the future, old adversaries must become partners and old grievances must be settled peacefully.

The same is true in Asia, where much depends on whether choices are based on past suspicion or current hope.

The message I conveyed during my trip is that America will do its part to help those focused on building a secure and peaceful future for Asia and the Pacific.

Accordingly, I reaffirmed our strong security relationships with our key allies—Japan and the Republic of Korea.

In both Tokyo and Seoul, I emphasized the importance of proceeding with the Agreed Framework that has frozen—and will ultimately dismantle—North Korea's nuclear weapons program. I announced scheduling of the joint briefing held yesterday on the proposal for Four Party peace talks concerning the future of the Korean Peninsula. And I discussed our decision to join the Republic of Korea in contributing emergency food relief for the starving people of North Korea; a policy that reflects our values and our belief that food should not be used as a political weapon.

Economic issues were also on the agenda in Japan and Korea. In both cases, my focus was on the implementation of agreements designed to assure fair access for American goods and services to local markets.

During my meetings with Chinese leaders, we agreed that expert level discussions would be held later this month between our countries on a range of nonproliferation issues. I raised America's strong concerns about Chinese practices on internationally-recognized human rights, including the right to free expression of political and religious beliefs. I noted the progress that has been made on bilateral trade issues, including textiles and the enforcement of intellectual property rights, and pressed for greater market access for American goods.

We also had an important discussion of Hong Kong, where the United States has substantial interests. I made it clear we expect China to ensure a smooth transition under the 1984 Joint Declaration with the United Kingdom and to assure Hong Kong's high degree of autonomy and way of life.

Finally, we discussed Taiwan, where American policies have not changed.

My visit, and China's willingness to receive me despite the death several days earlier of Deng Xiaoping, reflects a mutual determination to maintain our strategic dialogue. This dialogue is designed to identify and build on areas of cooperation, while seeking through candid discussion to narrow differences. By so doing, we hope to develop more extensive areas of common ground, thereby serving the interests of both our countries and the world.

Although I was only in Asia for a few days, I was impressed by the depth of the commitment to strong and stable relations with the United States. This is a region characterized by dynamic economic expansion. But it is also a region threatened by potential turbulence. American engagement is an essential source of stability and, as such, is welcomed on all sides.

Although our interests demand that we direct our attention frequently to Europe and Asia, we cannot—and are not—neglecting our friends elsewhere.

In regard to the Arab-Israeli peace process, we are working closely with the Government of Israel, the Palestinians and others in the region to sustain the progress generated by the Hebron Agreement. The Israeli-Palestinian negotiating process is critical to the structure of peace we hope to build in the region, and we must keep it moving forward. We are encouraging the parties to take steps to build the confidence and trust so vital to sustaining this process.

The recent visits of Prime Minister Netanyahu and Chairman Arafat, and the upcoming visits of President Mubarak and King Hussein, reflect the vital role that America plays in this effort. In that role, we will continue to back those who believe in peace, and continue to oppose vigorously those who seek to disrupt peace through violence or terror.

Closer to home, we are proud to be among the community of democracies that has come to exist in our own hemisphere.

Last week's visit of Chilean President Eduardo Frei was a reminder of the economic and political dynamism of our southern neighbors.

The 1994 Summit of the Americas provides a valuable framework for progress towards durable democratic institutions, ensuring the rule of law and promoting higher standards of living through free trade and economic integration. The Administration will continue working with all of our democratic partners to implement this framework, and to build strong relationships based on shared interests and mutual respect.

One example is our effort, together with Argentina and Brazil, to encourage a peaceful resolution of the border dispute between Peru and Ecuador.

Another is our wide-ranging relationship with Mexico, with whom we share a 2,000 mile long border and a need to respond cooperatively to challenges that include trade, the environment, immigration, corruption and—most particularly—the war against illegal drugs.

Last week, President Clinton certified Mexico's cooperation in that war, but with firm expectations of further progress. Along with Attorney General Reno and Director McCaffrey, I will be monitoring developments continuously. I recognize that there are those who disagree with the President's decision, but it was the right one. Corruption is deeply-rooted in Mexico and has undermined the anti-narcotics effort. But President Zedillo is aware of this and is fighting back. Our focus now must be not on unproductive efforts to allocate blame, but on strategies to overcome problems. In this effort, we will be pleased to consult with Congress, and we welcome Congressional support.

Mr. Chairman, Africa, too, is a continent of importance to the United States. Throughout the region, there are examples of nations taking the right steps to enlarge private enterprise, invest in education, expand opportunities for women and solidify democracy.

Despite daunting problems, the overall economic outlook in Africa is improving. And progress has been made in resolving ethnic and civil strife. The U.N. peace-keeping mission in Mozambique succeeded, and the mission in Angola remains on the right track. Fighting has subsided in Liberia. In Zaire, we are deeply engaged, with regional leaders and the U.N., in efforts to find a political solution to the current conflict and thereby prevent further humanitarian disaster.

In South Asia, we have a strong interest in encouraging cordial and peaceful relations between India and Pakistan, two long time friends of the United States. This is the fiftieth anniversary year of independence for both countries, and we would like to do what we can in cooperation with both to reduce tensions, curb the regional arms race and prevent nuclear proliferation.

The United States has important economic, security, political and humanitarian interests on every continent. We need to stay engaged. And if we are to have the resources required to do that, we will need the help of this Subcommittee.

Over the past few weeks, as I visited U.S. missions abroad, I could see first hand the connections that exist between the resources we provide here in Washington, and what our diplomats are able to do for America overseas.

For example, Embassy Moscow is charged with reporting on the complex evolution of a nation whose democratic development is critical to our future. Embassy Seoul has played a vital role in de-fusing tensions on the Korean Peninsula, while also processing more visa requests than any other mission. Embassy Tokyo manages one of our warmest relationships, but also helps to level the economic playing field for American companies. Our diplomatic team in Brussels is on the front lines of the construction of a new Europe.

And our mission in Beijing, cramped and handicapped by grossly substandard facilities, is striving to defend our interests, report on developments, and carry out a range of vital diplomatic functions in a nation of 1.2 billion people.

Mr. Chairman, I said in my confirmation hearing that America requires not only a first-class military, which we have, but also first-class diplomacy—which is threatened by the steady erosion of our international affairs accounts.

The goals I have outlined today of a more stable world, in which America's interests are protected, cannot be achieved without diplomacy that is flexible in responding to crises, firm in pursuing our strategic priorities, and vigilant in protecting our security. If we want our actions to be felt globally, we must have a global presence, global reach, and global expertise.

Accordingly, I am here to ask your support for the President's requests for funding for fiscal year 1998 for the accounts that are under your jurisdiction, beginning with State Department Operations.

#### TOOLS TO MAINTAIN OUR DIPLOMATIC READINESS

Here, our overall request is \$2.175 billion, roughly a four percent increase from the 1997 level.

As Members of this Subcommittee know, funds have been very tight in recent years. Although our workload in priority areas, and in the processing of passports and visas has increased, funding for our embassies and consulates has been flat during the past five years—and our buying power has been eroded by years of overseas inflation and exchange rate fluctuations.

We have done our best to manage this squeeze by streamlining operations, cutting almost 2,500 positions, postponing needed repairs and closing more than 30 overseas posts.

We have also recognized that, if we are going to work smaller, we have got to work smarter.

To this end, we have reduced dramatically the time required for an American to obtain a passport.

We have developed an overseas staffing model that relates personnel requirements to workload and our foreign policy priorities.

We have made travel advisories and other consular information available over the Internet.

We are redesigning our worldwide logistics operations to provide materials and services faster, better and cheaper.

We have significantly enhanced our information management capabilities.

We will actively pursue our part in a government-wide proposal for the retention of fees.

And we have put in place a system to provide incentives for more efficient operations and promote equitable sharing among federal agencies of overseas costs.

But sound management requires investment and modernization, as well as efficiency.

The small increase requested by the President this year will help us keep pace with inflation, modernize our information technology, integrate environmental concerns into the mainstream of our foreign policy and make a small downpayment on repairs to our dilapidated facilities in China.

Even so, we will not have the resources we need to improve other substandard facilities. The General Accounting Office has identified more than \$260 million in deferred maintenance.

Mr. Chairman, as I have told State Department employees, helping to design and implement American foreign policy is not just another career choice. It is a service to America as important and often as risky as service within our armed forces. It requires a commitment to American interests and ideals. And it needs to be done with excellence and spine.

Let us not forget that we depend on our diplomats to negotiate and verify the agreements that keep us safe from the spread of nuclear weapons.

We rely on them to maintain day-to-day support for the peacemakers over the bombthrowers in strategic areas of the world.

We turn to them to build relationships with other nations that will enable us to protect our citizens from the scourge of drugs, the plague of crime and the threat of terror.

We ask them to help open new markets and assure fair treatment for American goods and services in a fiercely competitive global marketplace, thereby creating good new jobs for our people here at home.

We expect them to look behind the claims of dictators and despots and to report the truth about abuses of civil liberties and violations of human rights.

We count on them to help Americans who are hurt, or fall seriously ill, or who are otherwise in need of a friendly voice in faraway lands.

And we require them to provide support to other federal agencies, from Defense to Agriculture to Commerce to the FBI, that are also involved in promoting American interests around the world.

So there is no more important a part of my message to you today than that the people who do America's work abroad need and deserve the support of Congress—the representatives of our people here at home.

#### TOOLS FOR LEADERSHIP THROUGH INTERNATIONAL ORGANIZATIONS

I also ask your support for the President's request for Contributions to International Organizations, an account that also serves a wide range of American interests.

For example, the U.N. Security Council is helping to ensure that Saddam Hussein never again threatens Iraq's neighbors whether conventionally or through weapons of mass destruction.

U.N. peacekeeping has helped end wars and build democracy in countries as diverse as Namibia, El Salvador, Cambodia and Mozambique.

U.N. mediation brought a halt to the decades-old civil war in Guatemala.

The U.N. War Crimes Tribunals are striving to hold accountable the perpetrators of ethnic cleansing and mass rape.

The International Atomic Energy Agency helps to ensure that nuclear weapons do not fall into the wrong hands.

The World Health Organization helps to protect Americans from the spread of infectious disease.

The Food and Agriculture Organization sets quality and safety standards that are essential to protect American consumers and that serve the interests of our multi-billion dollar food industry.

The International Labor Organization promotes respect for human rights in the workplace, and minimizes unfair international competition from firms and countries that do not observe core labor standards.

Other U.N.-related agencies help to keep air travel safe, facilitate international communications, and provide early warning of hurricanes. In our daily lives, we take these services for granted. As public officials, we cannot.

The question for us is not whether the U.N. and its many agencies work for us, but whether we can make them work better. That is why we have repeatedly stressed, here on Capitol Hill, at the State Department and the White House, the importance of reform.

Mr. Chairman, on this subject, we have come a long way. We are far from satisfied, but I think it is fair to say that there has been more reform at the U.N. during the past four years than in the previous forty.

In 1993, the U.N. had no Inspector General and no cap on a steadily increasing budget paying for a gradually increasing staff. U.N. peacekeeping operations were expanding rapidly without adequate discipline or financial controls. A series of expensive global mega-conferences had been scheduled. And both leadership and membership within many international organizations had become complacent.

Since then, much has changed. Despite limited resources, the Inspector General has demonstrated independence and determination in exposing inefficiency and waste. The U.N. has lived within a no-growth budget, and we believe it will continue to do so. U.N. staffing has declined significantly. New peacekeeping operations are far less frequent, better planned and more successful. An informal moratorium on U.N. global conferences is being observed. And our reform mantra of consolidation, accountability, prioritization and fiscal discipline has been echoed by a number of member states, including the G-7/P-8 and the European Union, supported by a promising new Secretary General and is having an impact throughout the U.N. system.

This progress did not come easy. Our position on the U.N. budget for the past year, for example, has been to support more money for the Inspector General and more for priority peace initiatives in Central America, while calling for dramatic reductions elsewhere. This did not go down well with those whose priorities differ from our own. Moreover, our policy of paying our U.N. assessments late, coupled with the accumulation of substantial arrears, has alienated both supporters and opponents of reform.

Last year, we proposed a five year plan for paying arrears, with the understanding that the payments would be tied to specific reforms. I think in retrospect that proposal was flawed. It did not provide much leverage with U.N. members. And we did not do very well with Congress. The \$50 million we received in arrears for U.N. peacekeeping, while welcome, was more than offset by an \$85.6 million shortfall in appropriations for fiscal year 1997 assessments in the overall CIO account. Clearly, if we are going to make progress, rather than lose ground, we need a different approach.

The President's proposal for arrears payments in this year's request is for \$100 million in fiscal year 1998 funds, and a \$921 million advance appropriation—that would fully clear our payable arrears—and would be made available in fiscal year 1999.

If this request is approved, we would have far greater leverage in negotiating the budgets of the international organizations to which we belong. And we would have a far better chance of success than we do now in negotiating reductions in our share of these budgets and in gaining approval for proposals on reform.

The result would be to reduce the future costs to the United States of participating in these organizations. By paying our arrears, we would get America out of debt. By reducing future assessments, we would keep America out of debt. By providing incentives for reform, we would enable these organizations to do more with less. This is a "win-win-win" proposition. The organizations would operate more efficiently, on a sounder fiscal footing. American leadership would be maintained. And long term costs to our taxpayers would go down.

In the days ahead, I want to work with this subcommittee and others in Congress to find a way to implement the President's plan. Our continued leadership within other international organizations depends upon it. Our principles require it. Our interests demand it. And our budget allows it.

The alternative is a climate in which our influence goes down as our arrears grow even higher, and our debts are used as an excuse to delay reform. Timing is important, because 1997 is the year when budgets for the next biennium are approved, and when the U.N. scale of assessments may be revised. If we squander the opportunity now, we will live with that mistake for at least two more years.

One additional point. Negotiating a reduction in our share of U.N. costs is not a simple matter. We make the argument, which I believe is valid, that the U.N. would be better off if it were not as dependent on the United States for funding. We can make the case that the overall contribution that America makes to international security and peace far exceeds that of any other nation, and should be taken into account.

Nevertheless, it is also true that Europeans currently pay a larger amount per capita to the U.N. than we do. If contributions to the U.N. were based solely on percentage share of world income, our share of U.N. costs would go up, not down. I believe we can win this argument, nevertheless, if we have the leverage that arrears repayment would provide. Without that leverage, quite frankly, we do not have a chance.

Our request this year also includes \$969 million for our scheduled payments to international organizations. Our request for contributions for international peacekeeping activities, at \$240 million, includes full funding for U.S. assessed contributions to critical U.N. operations along the Iraq-Kuwaiti border, on the Golan Heights, and in Angola, to name just a few.

Because the United States has unique capabilities and unmatched power, it is natural that others turn to us in time of emergency. We have an unlimited number of opportunities to act. But we do not have unlimited resources, nor unlimited responsibilities. If we are to protect our own interests and maintain our credibility, we have to weigh our commitments carefully, and be selective and disciplined in what we agree to do.

Recognizing this, we have good reason to strengthen other instruments for responding to conflicts, particularly the United Nations.

We know from history and our own experience that small wars can grow into big ones; that unrest provides targets of opportunity for aggressors, criminals and terrorists; and that unresolved conflicts can spark the migration of millions, draining the world's economic and humanitarian resources. U.N. peacekeeping is not the answer in all cases, but well-designed U.N. operations allow us to share the risks and costs of peacekeeping with others. They make it less likely that American military forces will face danger overseas. And they afford a valuable alternative when other options are either unacceptable, more expensive or less likely to succeed.

As we have discussed before, I appreciate your desire to be consulted about prospective peacekeeping operations. In fact, we incorporated Congressional language on advance notification of new or expanded peacekeeping missions in our fiscal year 1998 budget request. We need your understanding and support so that operations will be effective and so that we can pay our assessments. In that spirit, let me mention a couple of situations where new developments are possible.

Although progress has been made in Bosnia, we now face a critical need to implement the recent decision putting the strategic city of Brcko under international supervision for one year. Police monitoring will be a key element, and we expect to be talking with you soon about a proposed expansion of the U.N. civilian police mission in Bosnia to handle that task.

On the other hand, the situation in Africa has become less clear. An early mission to Sierra Leone now seems less likely. We have and will continue to consult closely with you on this.

#### USIA AND ACDA

Let me also say a few words about the USIA and ACDA budgets covered by your subcommittee.

As you know, USIA has undergone rigorous downsizing—cutting staff by 29 percent and its budget by 33 percent in constant dollars over the last four years. The consolidation of the Voice of America and Radio Free Europe/Radio Liberty has produced a 25 percent drop in its budget requirements since 1994.

USIA's programs continue to play a critical role in our diplomacy—whether beaming news to China and Cuba, providing frequencies for threatened independent radio stations in Serbia, or sending American students, teachers and professionals on exchange programs. After four years of cuts, we are requesting a small increase, to \$1.078 billion, covering improvements in broadcasting, exchange programs, and technology. This will allow USIA to be a streamlined but strong partner in our public diplomacy.

Let me also mention here the National Endowment for Democracy, which receives funding from USIA for its important role in supporting democracy and free elections around the world.

The Arms Control and Disarmament Agency has also faced four years of declining budgets. But its monitoring and implementation responsibilities have increased, in

no small part due to its own success in helping us to gain extension of the Nuclear Nonproliferation Treaty and negotiating the Comprehensive Test Ban Treaty and the Chemical Weapons Convention.

We can scarcely afford not to follow up on our successes with vigilance, even as we pursue U.S. interests such as a ban on antipersonnel land mines and a fissile materials cut-off agreement. ACDA has requested \$46.2 million for its operations. This is an increase of \$558,000—less than half the rate of inflation—to make sure that our objectives are met.

#### CONCLUSION

Mr. Chairman, in the coming months and years, the President and I will be working closely with you and the members of this Subcommittee. Fortunately, the foundations of a bipartisan foreign policy are already strong.

I think it is fair to say that we agree on the need to build a Europe that is whole and free, and an Asia-Pacific community based on shared interests and a common commitment to peace.

We agree on the need to engage with Russia and China at a time of uncertain transition in both these great nations.

We agree on the need to create an ever-expanding global economy in which American genius and productivity receive their due.

We agree on the need to fight back hard against terrorism, illegal drugs and the spread of nuclear weapons—and to seize opportunities for peace.

We agree that freedom is a parent to peace and prosperity and that our leadership is essential to preserve and extend it.

And if we agree on a principled and purposeful American role in the world, then surely, we must agree on the need to provide the resources required to sustain it.

Like military readiness, Mr. Chairman, our diplomatic readiness depends upon having the right people in the right places with the right support.

That is why we need the funds to maintain diplomatic representation in almost all the nations of the world.

That is why we need funds to train our diplomatic personnel.

That is why we need up-to-date communications equipment and information technology.

That is why we need to maintain facilities in which our staff can live and work safely and productively.

And that is why we need to maintain our influence in institutions such as the United Nations—by meeting our commitments and paying what we owe.

Mr. Chairman, members of the subcommittee, as we near the end of this century, we share a great responsibility: to maintain America's influence, power and prestige around the world. And by so doing, to lay the foundation for the next American century.

Towards that end, I pledge my own best efforts, and solicit your wise counsel and support.

Thank you very much.

#### CERTIFICATION OF MEXICO AS COOPERATING IN DRUG ENFORCEMENT

Senator GREGG. Thank you, Madam Secretary, and I appreciate that concise statement which covered a broad range of issues. I know a lot of people have questions, so I think in order to move the process along, we will limit the first round of questions to 7 minutes. The present order is myself, Senator Hollings, Senator Campbell—this is the order of arrival—Senator Domenici, Senator Mikulski, Senator Lautenberg, and Senator Bumpers.

You have outlined a variety of areas. Let me first say, as a premise, that this committee has traditionally been a strong supporter of the State Department, its goals and its purposes, and that I expect us to continue to be a strong supporter.

We are very interested in making sure the State Department personnel and their families have the support that they deserve for doing the job which is very important to the United States, both in the area of technical support and in the area of security. That

is something that we, as a committee, will address, and we will address aggressively.

There are, obviously, a lot of public policy issues, and you will be getting into a variety of them. But let me start with one that I am concerned about, which is more a topical issue of the time, and that is this issue—and I sent you a letter on it—relative to Mexico.

Mexico is delivering to the United States 70 percent of the drugs that come into our country. We have seen Mexico's drug czar be compromised, the potential compromise of a number of our Drug Enforcement Agency [DEA] agents, and their informants.

We know that there are two families in Mexico who are basically operating most of the major drug cartels in the United States, and who have replaced much of what was coming out of Colombia. And we know that, unfortunately, there is significant corruption within the police who are responsible for policing drugs along the border. I know from discussions with Senator Domenici that many of our border ranchers are living in fear of the threat that individuals coming across the border from Mexico, who are not being apprehended and who are threatening not only the assets of these ranches but actual lives of people living on these ranches.

In this context, my question to you is, how do you expect certification to assist the process? We went through this once before, I believe, and clearly things have gone downhill. Why do we expect now that certification is going to improve the situation, and what would have been the effects of not certifying, in your opinion?

Secretary ALBRIGHT. Mr. Chairman, thank you very much for asking that question, because I think it is one that is on everybody's minds at the moment. First of all, let me just quickly say that things have not gone downhill. I think, in fact, despite all the problems, that there has been a lot of evidence that cooperation is at unprecedented levels. That is not to say that this has been an easy decision for my recommendation to the President, or for the President to make his decision to certify.

But there is no doubt in our minds that President Zedillo understands that the drug issue, and the relationship that it creates between us and Mexico, poses major problems. The drug issue to Mexico itself is viewed as a major national security problem for them, as it is for us. And they have, in fact, done quite a lot in the last few years in order to improve the situation. There have been increased drug seizures, for instance, of heroin, by 78 percent, marijuana, by 30 percent, and arrests have been up more than 20 percent.

They have eradicated record levels of illegal drug crops. They have doubled the discoveries of clandestine laboratories. They have improved on their extraditions. They have improved cooperation in domestic enforcement against money laundering. They have enacted laws authorizing asset forfeiture, and against money laundering. They have restricted precursor chemicals. They have done a great deal.

But they also understand the magnitude of what they still have to do. In conversations with President Zedillo, or with the foreign minister, they know that they have a huge problem on their hands, and President Zedillo is revamping their entire legal system and

their police system. And so they are working the problem, and understand how serious it is. They do, obviously, point to our demand issue, also, which is something that we all know that we have to work on.

President Clinton believes, as do I, that had we not certified, we would have undermined this unprecedented level of cooperation. It is not a clean record here. We know that. And the President has asked the Attorney General, Director McCaffrey, and me to continue monitoring developments, and reporting to him.

And we believe the level of cooperation is much better because we are working with them, rather than having kind of a blame placing activity.

We also have to remember the following thing, that we have a 2,000-mile border with Mexico. We have important relations that are not drug related. We have questions related to immigration. We have issues of trade of importance to business people. In sum, we have a whole set of issues.

So we hope you all understand that this was a difficult decision for the administration, but one that we believe to be right. It's important to have this increased cooperation with Mexico.

Senator GREGG. I can appreciate that, looking at it from your side of the table. But looking at it from our side of the table, when we hear people like Tom Constantine, head of DEA, say that his agents do not have anybody in Mexico that they can trust to do business with, it leads one to conclude that the problems are so acute that certification should have been in serious doubt.

I appreciate the comprehensiveness of your response. Senator Hollings?

Senator HOLLINGS. Immediately on that, let me say something, because I had the pleasure of meeting with the Secretary, and I asked who was going to succeed Pat Kennedy who had moved in temporarily for Dick Moose, the Under Secretary for Management. I know that Pat is the Assistant Secretary permanently for administration. I thought he'd go back to that post.

Somebody interpreted my comment as something against Pat Kennedy. I'm 100 percent for Pat Kennedy. Rich Greene, your State Department chief financial officer—we worked with him for years. He's outstanding. But I still want to know who's going to replace old Moose, because we got a lot of good things done.

But I did talk with the Secretary and, with respect to Mexico, I indicated to her just exactly what the facts were. I wasn't going to join in the Feinstein resolution, because there's an old adage in the artillery, no matter how well the gun is aimed, if the recoil is going to kill the gun crew, you don't fire it.

I said, wait a minute, before I go on this resolution, what is my solution to the thing? I didn't come this afternoon and say I've got a particular solution, but I've certainly got a different approach.

I've been listening again for the past 72 hours, since I had the chance to confer with you, Madam Secretary. And I qualify as a witness. This has been—Mexico—a case study operation, for me, for numerous years now.

For example, right to the heart of it, your answer—I can just get a copy of Warren Christopher's answer—almost the same. I don't

say that in a critical fashion, but Secretary after Secretary have come and said so.

In the NAFTA operation, it was quite apparent that, as Pat Moynihan said, how can you have free trade when we can't have a free election. And they didn't have any labor rights, they didn't have a free market, they did not have a revered judiciary. Their law enforcement was under serious question. Assassinations were going on down there at the particular time.

And we looked at Europe, and they had used the Common Market approach, and I wrote an article to the effect that we ought to try it. Later we questioned the \$12 billion, and I said it's time we ought to have it as a Marshall plan, where we had steps of improvement, of freedom, of free markets, clean up the judiciary and otherwise, government.

Now I come to this certification tool, and it looked to me at first blush, that's the sort of inappropriate tool at an inappropriate time, and now I believe otherwise. I believe you're going to have to cause a crisis down there, for the simple reason that what Chairman Gregg has expressed concern about, the truth of it is that it's not improvement.

We've gone downhill since 1993, in the last 3 years. Mexico's got far less apprehensions or arrests with respect to drugs. There's not a single—you talk about extradition—not a single extradition with respect to drugs. We know now that in Los Angeles, the entire drug thing is supported by one drug cartel, a boss down there in Mexico.

And the gangs coming up into Mexico, and that movement is beginning to get on the increase here in the United States, whereby the price of drugs is going down, of course. It's \$200. But it's \$2,000 in Oklahoma City, and these gang movements, supported by drugs and the serious crime in the country, all being drug related.

I'm beginning to feel very—I haven't decided yet, but I'm about—and that's why I want to be candid with you—that the only thing that we can do is cause a crisis. I listened to your testimony, and you say cut off any chance—no, undermine the level of cooperation.

And General McCaffrey just a little while ago said cut off any chance to work with our friends in Mexico. Incidentally, that's not a secure briefing. I didn't attend that. I've learned not to go to these secret briefings, because it's leaked immediately and then I'm questioned about the leaks. So I don't have to get questioned about them in Washington.

But we have the same thing, the same thing, and I believe you folks have got plenty of things to do, and unwantonly you come on, the Attorney General comes on, and another—Secretary of the Treasury, and everything else—trying to bolster Mexico.

As they say, the economic situation, you've let the drug thing take over. And in a line when General McCaffrey says we would cut off any chance to work with our friends—well, we've got the wrong friends. We've got the wrong friends.

Here's exactly what the Dallas News says. Intelligence on corruption—this is this morning's—especially by drug traffickers has always been there, said Phil Jordan, who headed DEA's Dallas office from 1984 to 1994.

But, quote, “we were under instructions not to say anything negative about Mexico. It was a no-no, since NAFTA was a hot political football.”

And what we are really doing is doing our best—I don’t doubt your sincerity—but you’ve been up in New York. And I can tell you here and now, everybody comes and sincerely believes, and a quick look at it, and what have you to keep the economic thing together, we’ve let the drug thing just gobble us up.

And the only way I know to get the right friends down there is to get rid of that PRI, and I hope maybe now that we can vote for certification, the wrong tool, that it will cause a crisis, and maybe the right friends will begin to emanate.

Secretary ALBRIGHT. Senator, if I might, I think that if there were a crisis there, it would harm us deeply.

Senator HOLLINGS. Temporarily. But this is continued harm that we’ve been suffering here.

Secretary ALBRIGHT. I think, honestly, that if one looks at this in terms of one’s own neighborhood, which is what this is, if you have somebody living in a house next door to you that has very serious problems, and you help create a fire in that house, it creates problems in your own backyard.

And I think that we have to make very clear our message, which we have, and keep pursuing this. This is a very serious problem. Nobody is saying it’s not serious. And I think that the issue here is that it is not the only issue we have with the Mexicans. They are right there, by us, with many, many problems that we need to deal with.

Senator HOLLINGS. But I’m saying they have already caused a fire in our own backyard. And, in fact, they say one of our mayors—our mayors—on the border is under the cartel pay, and otherwise.

So we could get into it, but there you go.

Secretary ALBRIGHT. It’s a tough decision.

Senator HOLLINGS. I’m almost like Bob Dole: Been there, done that on this one. Even though I have misgivings about it, whether it’s the right thing to do, Mr. Chairman. Thank you.

Senator GREGG. I appreciate that. Senator Campbell.

#### INTERNATIONAL CRIME

Senator CAMPBELL. Thank you, Mr. Chairman. As long as we’re focusing a little on international crime, I guess that’s one of the few downsides of countries turning to democracy. The crime rate often seems to go up after they become democratic nations. And certainly we’ve seen that in Russia.

I wanted to ask a couple of specific questions, but I did want to say that some of this international crime certainly touches in our own home States. I note of interest in my notes, one of the most notorious Russian mobsters has a Colorado driver’s license, and an address right outside of Denver, according to FBI and Interpol.

I know that some of these international criminals have tentacles clear across the United States. One George Hugo Reyes Torres, the leader of the largest drug trafficking organization in Ecuador, apparently has smuggled tons of cocaine just into our State alone.

And so we've been dealing with a number of broader issues, and I know I have limited time, but I would like to ask you one specific question, and that is it was my understanding that Mexico has denied our agents the ability to carry arms in Mexico when they're down there. Is that true? And if so, what are we doing to try to make sure that those agents are protected?

Secretary ALBRIGHT. Well, this, Senator, is one of the issues that we are dealing with to try to get them to allow our agents to act have that kind of protection.

But if I might return to something that you said about international crime, we clearly are facing a new set of threats. There is no question about that. They are created—I don't know if I would agree with you, that they are created by democracy, because totalitarianism creates a set of different threats.

But I think the issue here—

Senator CAMPBELL. Different system of justice.

Secretary ALBRIGHT. Well, it is. But the issue that I think we need to focus on is that we need different systems of international cooperation in order to be able to deal with what are now these transnational threats, that we never had before.

And that is why, I think, we need to have different kinds of relationships with countries, international organizations, ways of using our diplomacy to deal with what is a whole new set of issues. And international crime is clearly one of them, and a very high priority for this administration.

Senator CAMPBELL. There now is an interdepartment working group, isn't there, that the State Department is involved with, with the DEA and a number of other groups?

Secretary ALBRIGHT. Yes.

Senator CAMPBELL. Where you are supposed to try to coordinate some activities?

Secretary ALBRIGHT. We are trying to do all of that, and then also with other countries. But it's a new situation. We face new kinds of problems.

#### RUSSIAN DISQUIET WITH THE ENLARGEMENT OF NATO

Senator CAMPBELL. Let me change topics, since I have limited time, Mr. Chairman, and move away from crime a little bit. For the last 4 or 5 years, several times, I have gone on a trip with other Senators and Congressmen to the North Atlantic Assembly, which is a parliamentary organization affiliated with NATO. And I noted with interest that the Russians have had a delegation there during the last few years as observers. And they are clearly very interested in increased trade and economic help from the West and so on.

But when you talk about any kind of mutual security, they seem to get very, very wary. And I was interested in your statement about your recent trip to Russia. But yesterday, as I understood President Yeltsin's comments that were relayed on the news, he seems to be absolutely opposed to any eastward expansion of NATO.

Would you comment on that?

Secretary ALBRIGHT. Yes; this is obviously the issue that we are going to be dealing with in the next months and onward. The Rus-

sians are not happy with the enlargement of NATO. That is true. They understand, however, that we are going forward with it.

They will make negative comments about it. They did to me, and President Yeltsin did in his state of the federation message.

But what is of overriding importance to them is that they have a good relationship with the United States. We had that discussion. President Yeltsin is looking forward to his meeting with President Clinton in Helsinki. There have been very important meetings of Vice President Gore with Prime Minister Chernomyrdin, and a whole set of issues which would indicate that the importance of United States-Russian relations overrides all that.

To help deal with their disquiet about the enlargement of NATO we are working the Russians and NATO on a NATO-Russian charter, which would allow the Russians to do some of the things that you were talking about in the North Atlantic Assembly. The charter would allow them to have a voice, but not a veto, over actions within Europe itself, so that they feel a part of an economic and political system.

I think the issue here is that we need to see a new Russia, and they need to see a new NATO. But I am not going to tell you that they think an enlargement of NATO is terrific for them. But they are seeking other relationships with NATO and with us that would minimize their disquiet with the enlargement of NATO, and that is what we're working on with them.

Senator CAMPBELL. Thank you. I see my time is already running out, but I just wanted to commend you on your efforts, since it is a huge task, and I wish you well.

Secretary ALBRIGHT. Thank you.

Senator GREGG. Thank you, Senator. Senator Domenici.

#### EVIDENCE TO SUPPORT CERTIFICATION OF MEXICO

Senator DOMENICI. Mr. Chairman, Madam Secretary, even though I opposed certification, I totally disagree with Senator Hollings. I don't believe now is the time to create a major crisis with Mexico, as that pertains to trying to maintain the stability of President Zedillo.

I think we ought to do just the opposite, and try to maintain that. So I want you to carry back to the administration that if we can get some evidence that Mexico is going to do something—something as simple as extraditing some of the felons that are already indicted—that those of us who are not in favor of certification might very well support the President, if we can get some action that takes place.

Now, I say this fully aware that Mexico has a terrible problem, that already they may have such a pervasive negative effect on their society from this illegal drug money that they may not be able to fix things.

But I don't think we ought to be party to saying that we want to bring down Zedillo, or cause that kind of radical change to occur in Mexico, because nothing will get fixed, and America will have a bigger mess on its border than it has today.

## U.N. ARREARAGES

Now, having said that, let me suggest a couple of things. I'm changing the subject to the United Nations and Bosnia. We have spoken about this. I think when so much is made of America being in arrears in its U.N. fees—and we are—that perhaps those in the administration who are saying let's pay up ought to remind everyone in the world that we're doing far more than our share of the kind of work that the United Nations ought to be doing.

I am reminded that we had a briefing on how much we are spending in Bosnia—and that's not a U.N. effort, but let me make my point. It is estimated by the Secretary of Defense that on defense matters only, by the end of this year we will have spent \$6.5 billion in Bosnia, and that we will probably, on the civilian side, spend \$1.1 billion.

Now, I only make that point because those in the United Nations that complain so bitterly about us failing to make our dues current, we ought to remind them who would take care of this Bosnia problem, which is more a U.N. problem than just an American problem. The ratio of money there is overly on the side of America, because we have most of the troops, most of the equipment, most of the advanced technology there.

So I just raise that point with you.

## STATE DEPARTMENT BUDGET REQUEST

My last observation has to do with your budget. Frankly, there are some who would have thought that with a new Secretary, and the way things were, that you would ask for bigger increases than you asked for—although I would remind everyone that overall, all the functions of foreign affairs, the request is for a 7.6-percent increase.

Now, much of that is a big increase for the U.N. arrearage, and some things like aid to Russia, which maybe people will support, a brandnew initiative for about \$300 million or so.

Some of us want to help you improve the State Department and its functionaries overseas, and the things it does. The only thing I raise is that it may be hard for any function of Government to get a 7.6-percent increase in a discretionary account.

I stop there, and perhaps you could comment on what I have said. It was a pleasure meeting with you yesterday.

Senator GREGG. So said by the chairman of the Budget Committee.

## MEXICAN PROGRESS

Secretary ALBRIGHT. Thank you very much, Chairman Domenici. I think we did have a real good meeting yesterday, and went over a lot of these issues. But let me just say, on the Mexican issue, exactly the kinds of points that you're raising are the kinds that the President has asked the Attorney General and Director McCaffrey and me to keep reviewing, as to what their arrest and extradition record is going to be, how they're dealing with the corruption, the money laundering.

Those are the kinds of issues that we are going to be focusing on.

## U.N. ARREARAGES

On the question of the money, let me say that these are arguments that I have made in the United Nations when I was there. The thing that I am often reminded of is that other countries also do contribute in ways beyond their U.N. dues, and help take care of world responsibilities where they are active.

One of the reasons why we would like to have a forward appropriation is because there is going to be a renegotiation of our assessment rate at the United Nations.

We believe that we are paying too much, and I think that one of the difficulties—and I think you, as politicians, understand this even better than I—is that it is hard to negotiate if you don't have leverage.

And in New York, every time I'd go into negotiations I'd say I want this and this and this as reform measures, and they would say fine, but you have created an artificial financial crisis here, and where is your money.

And even our best friends, the British, came up with a sound bite they've waited 200 years to say, which is "representation without taxation."

So the issue here is that it's important for us to have the bona fides and up front negotiating leverage in order to lower our assessment, because I agree with you.

## STATE DEPARTMENT BUDGET REQUEST

On the issue of our budget, let me say that for us what has been so difficult is that there has been a decline in the State Department budget, and a decline in our purchasing power, because the budget has been flat or decreasing. We are trying to reverse that trend. Your help will be very important to us.

We are also trying very hard to do our share for a balanced budget. And, finally, we have put into place a lot of management changes, whereby we think we can do more with the money.

So we are very grateful—and I'm grateful to be among friends here who are saying ask for more.

Senator DOMENICI. I'm not sure we said that. [Laughter.]

Secretary ALBRIGHT. You did, at the beginning.

Senator DOMENICI. Some might have expected you to—

Secretary ALBRIGHT. Some might have expected. Slight liberty here.

But the friends part is true. I think the issue here is we are going to try very hard to get the resources we need, and a 4-percent increase for us would be very important.

Senator GREGG. I think we are going to want to get to this forward funding. I know the chairman of the Budget Committee, like myself, has serious concerns about how that sort of perverts the budget process, to move that out from underneath, essentially, the budget and the caps and create a debt that has to be paid later. But we will get into that. Senator Lautenberg?

Senator LAUTENBERG. Thank you, Mr. Chairman.

Senator GREGG. Another on the Budget Committee here.

Senator LAUTENBERG. Mind you, I'm the ranking member. I want to give you more. [Laughter.]

## CROATIAN COOPERATION WITH WAR CRIMES TRIBUNAL

But anyway, it's good to see you here, and to be able to get a few matters straightened out. One of the things that's concerned me is the way war criminals escape prosecution in the Bosnia-Croatia-Serbia area.

It was our understanding that these indicted war criminals would be turned over to the International War Crimes Tribunal, but they have not been. Nonetheless, last year the State Department gave permission, or an instruction, to the Executive Director of the World Bank to approve a loan to Croatia, based on its assessment that they were cooperating and not harboring persons indicted by the ICTY.

As part of the negotiations with the Croats at that time, a man named Timor Blasic, an indicted Croatian war criminal was arrested, and transferred over to the tribunal. Croatia has now received a request from the ICTY for documents that are essential to the trial of this individual.

Do you believe that these documents will be turned over to the ICTY based on the performance to date, and do you believe the Croats will cooperate by ensuring the apprehension of the remaining indicted war criminals who have been widely sighted all over the place in the region?

Secretary ALBRIGHT. Well, first of all, I thank you very much for your support of the War Crimes Tribunal. We have had those discussions, and I do think that it is a very important effort in terms of ultimate reconciliation in the whole region.

And so it's an effort that I think is well worth pursuing, and while it's not perfect, it is making a difference.

Let me just say on the Croatian-specific issue of these documents, it is our understanding that the tribunal is currently in negotiations with the Government of Croatia on this subject.

We are going to support the tribunal fully in its request, and we will do whatever we can to press the Croats on it.

I can tell you that in conversations I have had with the Croatian Foreign Minister, and other people within their government, that they understand that we expect them to live up to their obligations.

And they are very much aware of what it means for them if they don't cooperate. So we will continue to press them, and we'll help support the War Crimes Tribunal in its efforts.

## FOREIGN ASSISTANCE FOR COOPERATION WITH WAR CRIMES TRIBUNAL

Senator LAUTENBERG. Yes; I believe that if we are going to leave that place in less than 18 months, we want to ensure as best we can that the killing stops, that the dishonesty stops, that these fiefdoms are brought into the system.

And I don't think that we can make the case while these indicted war criminals wander around kind of thumbing their nose at the rest of the world.

I also believe that foreign assistance, provided bilaterally, and through the World Bank, can be used as leverage to secure greater cooperation from the parties to the Dayton agreement in arresting and transferring the indicted war criminals.

At the London conference, December 1996, the international community reaffirmed that the provision of economic reconstruction assistance is closely linked to cooperation with the ICTY.

What was our position on the conclusion reached by the London conference?

Secretary ALBRIGHT. Our conclusion?

Senator LAUTENBERG. Yes; our position on the decisions that they made.

Secretary ALBRIGHT. Let me say that as an administration we have, and I especially have, felt very strongly that cooperation with the War Crimes Tribunal by those nations is key to ultimately having, first of all, a relationship with us, cooperation on bilateral assistance, and, ultimately, the ability, for instance, in the case of Serbia, to rejoin the international community and get international assistance. All of this has depended upon their cooperation with the War Crimes Tribunal.

So I think that it is absolutely essential as a part of Dayton that there be cooperation. So we have supported this kind of conditionality, if you want to put it that way.

#### U.S. SUPPORT OF WAR CRIMES TRIBUNAL

Senator LAUTENBERG. I would urge you to keep the pressure on there, and not permit borrowing or encourage loans if we're not getting what we want and if parties are not living up to their commitments.

You've been a strong supporter of the International Criminal Tribunal. I know that. But we have a problem: over 1 year after the Dayton agreement was signed, only 7 out of 74 indicated war criminals are in custody.

These people are seen by journalists and the community at large, and nothing is being done. So what can we do, would you say, Madam Secretary?

Secretary ALBRIGHT. Senator, what we are doing on this is, first of all we are working with the War Crimes Tribunal itself, and providing assistance to it in kind, and are major supporters of it. But we are also now looking at ways to give greater credibility to the War Crimes Tribunal in their attempts to get their hands on these various people.

So I can just assure you that it is a very high priority for us. And we are looking for a variety of options as to how to give them greater credibility.

I am very proud that sometimes I am called the mother of the War Crimes Tribunal, and I really do believe that the only way to actually get reconciliation ultimately is through justice, and that is why the War Crimes Tribunal is so key.

#### STATE DEPARTMENT POSITION ON IMPORTATION OF U.S. MILITARY WEAPONS THAT ARE CONSIDERED RELICS

Senator LAUTENBERG. Mr. Chairman, I want to ask one other thing here, and that relates to the State Department's role under the Arms Export Control Act, regulating the importation into the country of U.S. military weapons, that are considered curios or relics.

We're talking about hundreds of thousands, perhaps millions of guns, that we furnished to governments during World War II, including M-1 carbines, one of which I carried in that theater. The Department of State's policy since the late 1980's has been to advise the BATF to keep these weapons out of the hands of commercial gun dealers in the United States.

And frankly I believe the State Department is doing the right thing. But last year, the Senate version of the CJS—this subcommittee's—appropriations bill included a provision that would have forced the State Department to approve the importation of these weapons.

Now, I strongly opposed that provision, along with the White House, the State Department, and the Treasury Department. In the end, it was dropped from the bill. Does the State Department still oppose the importation of these weapons?

Secretary ALBRIGHT. Well, I know that this is an issue that has had a lot of attention up here in the last years, and the State Department is charged, as you have pointed out, in dealing with the subject. We take this responsibility very seriously, and we are talking about a large volume of weapons which could, in fact, be converted to automatic weapons, and which may be attractive to criminals.

There may be some ideas again coming out of the subcommittee, and we would need to look at all of them in light of our responsibilities.

But we understand the problem. We understand the division of views on it, and we take our responsibility on this seriously.

Senator LAUTENBERG. Your opinion is very important, and if you could make certain that after you've reviewed the matter you would let us know. Thanks very much.

Senator GREGG. Senator Bumpers.

#### BENEFITS TO THE UNITED STATES OF CERTIFICATION OF MEXICO

Senator BUMPERS. Madam Secretary, I know that decertification would increase the already considerable hostility of Mexico toward the United States. What do we get out of it?

Secretary ALBRIGHT. If we decertify I think that our problem would be that there would be much increased hostility from Mexico to the United States. I think all of us who know history know that the relationship of Mexico and the United States has been troubled over the years, and that it is possible to very quickly get people on both sides of the border excited about the sins of the other.

We have managed, I think, in the last years to have the best possible relations with Mexico, where we are able to resolve trade disputes, where we are dealing in an appropriate way with questions of immigration, where we deal with questions about environmental legislation.

And we have developed a civilized and very good relationship with them. They understand that they have a major national security problem on their hands. They are not denying the problem. And President Zedillo is also not denying the problem.

He is working to revamp his whole system. I think that we basically are denying him the ability to work through the problem if we create a backlash.

And that is, again, Senator, why I said this is not an easy decision, but we have to see what the alternative is, and the breakdown in civility and relationships that it would bring.

#### SINCERITY OF PRESIDENT ZEDILLO TO COOPERATE IN DRUG ENFORCEMENT

Senator BUMPERS. We have no reason to believe through our intelligence sources, or just because of your own conversations with Zedillo, that he is not sincere in his efforts to cooperate with us, do we?

Secretary ALBRIGHT. On the contrary. He has taken some very tough steps. There has been a lot of criticism, and justifiably so, of the fact that Mr. Guttierrez, their drug czar, was somebody that became complicit. But the bottom line is that Zedillo got rid of him, and he is seeking to find the best people. He knows he's got a major problem, and he is basically seeking our support in allowing him to take these very difficult steps.

#### BUDGET FOR THE UNITED NATIONS

Senator BUMPERS. On a separate subject, Madam Secretary, as I understand it, you have a supplemental request for \$1 billion to pay arrearages to the United Nations. And then that leaves you with a request for an \$133 million increase. Is that correct?

Secretary ALBRIGHT. Well, our budget request for the United Nations is divided into two parts. First, we have our attempt to pay back the arrears, and second, we are asking for a budget request for the United Nations of \$363 million.

Senator BUMPERS. Budget request for what?

Secretary ALBRIGHT. The United Nations.

Senator BUMPERS. For how much?

Secretary ALBRIGHT. Well, it's in several parts. We have a budget request for the U.N. regular budget of \$320 million.

Senator BUMPERS. Then \$1 billion for arrears?

Secretary ALBRIGHT. Yes.

#### PERCENT INCREASE OF STATE DEPARTMENT BUDGET

Senator BUMPERS. Now, how much does the State Department increase amount to?

Secretary ALBRIGHT. Four percent.

#### U.S. TREATMENT OF AMBASSADORS AND FOREIGN SERVICE OFFICERS

Senator BUMPERS. Madam Secretary, I used to be one of the members of the peanut gallery when it came to the State Department, and particularly the Foreign Service. But I have done 180 degrees on that in the last several years.

I can tell you that our facilities in China are disgraceful. Our Ambassadors and staff have a very penurious existence. I was talking to an Ambassador last week, and his wife, who came home, and I said, did you get your expenses paid. She said, no; I'm only permitted one trip home a year. I just happened to find a cheap ticket, so I could come home with my husband.

I consider that outrageous. Now, we don't allow our spouses to travel at Government expense, but to say to the wife of an Amba-

sador, you only get one expense paid trip home a year is ludicrous. There ought to be at least two or three trips home.

The Ambassadors are at the beck and call of the State Department, at your beck and call. You ask Ambassadors to come home for consultation all the time. And sometimes they are here for 10 or 12 days, but their spouses can't come.

Last summer there were about six Senators in Mongolia. The Ambassador's wife spent—we went over to the Ambassador's house twice. There aren't too many four-star restaurants in Ulaanbaatar.

And we went over to the Ambassador's residence twice, and his wife spent most of the evening in the kitchen, because they didn't have any help. They couldn't afford any help.

And every place you go you find that kind of situation, and I think it's terrible to treat people who are true public servants, who are serving, sometimes at some sacrifice to themselves, to make them live like paupers. I don't think it's a good reflection on the United States, but above all, it's demoralizing to the Foreign Service Corps.

Thank you, Mr. Chairman.

#### COORDINATION OF EFFORTS TO FIGHT TERRORISM

Senator GREGG. Thank you. I would second that statement. I think the way we will proceed is to go to some more questions and see if we can't wind through all this.

The first issue is one that I have. It's an issue that I have been raising, but I am still not comfortable with the answers that I have been getting. It goes to the issue of terrorism, and the management of it at the highest levels within the administration.

We have four different agencies that are primarily responsible. We have the State Department; we have the Justice Department, specifically, the Federal Bureau of Investigation [FBI]; we have the Central Intelligence Agency [CIA]; and we have the Defense Department.

While talking with the Chairman of the Joint Chiefs yesterday at another hearing in another subcommittee, I asked him the question, do you think there is adequate coordination between the four departments, and he felt that there was adequate coordination between Defense and CIA, but he did not feel that there was adequate coordination between State, Defense, and the FBI; and Defense and FBI and CIA and vice versa.

The problem is that it does not appear to me, even though there are structures in place to do this, that there is a sense of urgency coming from the top to get all the parties in a room—and by parties, I mean the senior people, yourself, the Chairman of the Joint Chiefs, the Director of CIA, the Attorney General, and the Director of the FBI at least once or twice a month, and analyze how your different agencies are cooperating in anticipating threats.

I'm not talking about responding to an event. I think we've got structures for that. I am talking about anticipating where the threat comes from, and how we should coordinate the effort.

I would like to get your thoughts on whether you feel we are doing enough in this area of coordinating the core agencies, and whether or not we are doing enough in the area of anticipating

threat, and communicating that to people who have responsibility for responding.

Secretary ALBRIGHT. Mr. Chairman, let me say that we are all very appreciative of the interest that you have taken in this area, because we all feel a great sense of responsibility ourselves, obviously, for the lives of people that are abroad.

And I appreciate very much what Senator Bumpers was saying about how difficult life is for many diplomats. Everybody thinks it's so glamorous, but it is not so. And being exposed to terrorism is one part of why it's a lot less enjoyable, I think, being an Ambassador these days than in previous times.

I appreciate what you are saying, and I think that it is my belief that there is good coordination. But I am new on this job, and I am going to take a closer look at it in terms of a regular coordinating mechanism on it.

I am going to maintain the Office of Coordinator for Counterterrorism that we have in the Department. I think you're right, there probably needs to be a closer, structured way for the agencies to work together.

We do talk all the time. There is no question about that. It is very high on our minds. We talk about it in a variety of meetings where agency heads get together. But I think perhaps given the nature and the immediacy of many of these threats, we should take a closer look at it.

But I assure you that I see it as my highest responsibility, to make sure that American citizens abroad are not unduly exposed to terrorist threats. It is the biggest problem that we have, and we will work with you on that.

Senator GREGG. Well, I would take it one step farther. I personally believe that the single biggest threat to Americans in the United States, in the continental United States, and including our two States that are not within our continental borders, that the biggest threat in the next 10 to 15 years to our security is not a war. It's an act of terrorism involving a chemical, biological, or nuclear weapon.

And I just don't feel that we are doing enough to coordinate the effort to anticipate. Theoretically, and legally, the National Security Council has the obligation to do this. But it doesn't have the clout to do it. It really needs to be done by having, in my opinion, you and the Secretary and the Attorney General and the Chairman of the Joint Chiefs, and the Director of CIA sit in a room at least regularly enough until you get the systems in place to actually have it work.

Because I don't think it's working right now. And I would appreciate it if you took a hard look at that.

I do think, if I were to analyze it from my exposure to this, and I've tried to take an in-depth look at it, that probably the State Department is the weakest link in the exercise right now, especially in the field.

And the amount of communication that occurs within the different agencies is not at the level it needs to be. It's there, and I know everybody is sincere about it. I don't doubt that for a minute, and I know everybody puts it on their agenda and they talk about it. I just don't think we're getting it.

Secretary ALBRIGHT. I understand that. Let me also say that you have pointed to a very important problem, which is the chemical weapons, and that is one of the prime reasons that we need to have your advice and consent on the chemical weapons convention.

Senator GREGG. That's another subject.

Secretary ALBRIGHT. But I do think that it points to the fact that we do see there is a threat. There is no question. And I think that you have pointed out very serious problems. We are working on them, and I take it as a very serious point, obviously, in terms of my own responsibility, and I will be talking with you and with my colleagues.

Senator GREGG. I want to get into a couple of other issues, but let me turn to Senator Hollings first.

#### SENATOR HOLLINGS' COMMENTS ON CERTIFICATION OF MEXICO

Senator HOLLINGS. Right to the point again, Madam Secretary, and we know the certification, we have had certification from the very same people. We were certified, for example, on NAFTA, that it was going to create 200,000 jobs, and instead the United States lost 300,000 jobs.

It was certified that it was going to bring about a wonderful increase in the balance of trade for the United States. It has gone from the plus of five to a minus \$16 billion.

We said it was going to solve the immigration problem. On the contrary, it has exacerbated it. It was said that if we didn't vote for it, that Asia folks were going to move in. They've moved in, and now they're dumping right into the open market here, at predatory prices.

We said that this is the one chance for the average Mexican to really improve his particular lot, and now on January 17, and I quote Lawrence Summers, who is more or less the daddy rabbit of the whole movement at that particular time, he says the average Mexican is far worse off today than what he was prior to NAFTA.

So when the same crowd comes with the certification, and we hear—and the deepest respect to you, because I know if they had put me on as Secretary of State I'd have gotten the same thing, the boilerplate that they give out—here it is.

Four years ago, the best of the best, a quote on this very topic from Secretary Warren Christopher: "President Salinas has tripled Mexico's antidrug budget, tackled the related problem of corruption, taken on the drug barons, many of Mexico's most notorious drug traffickers are now behind bars. This is breakthrough to progress"—on and on and on.

Now, I am fully aware of the demand, and some would get off into that, and that's a good point to be made, as it were, if not for U.S. demand this drug country wouldn't be being financed. We're the ones financing it. And I'm trying to work on that phase of it.

But I did not say to bring down Zedillo, as the Senator from New Mexico, Senator Domenici, inferred that I said. On the contrary, I said let's not certify, but rather decertify, and it could well help President Zedillo get on the top of things there.

You know, as you said, we've had a history of talking about the sins of each other over the many, many years. If Zedillo really had some authority to do all these things we're asking him to do, our

decertification would strengthen—he'd say that gringo from the north—because I've heard this.

I was down there one time with President de la Madrid, and man, it was hugs and kisses and we were working together fine and what have you. And we went all the way down to the car, and I forgot a jacket. Went all the way back up, and he was then briefing the Mexican press—and telling the press “I told those gringos from the north to bug off. We told them we're not going to submit”—we never had any of that conversation at all.

So they used us. I know a little bit about Mexican politics. So if you have this saying we're not going to take it anymore, because it's really now getting into the gang warfare, and it's getting into not just California and the west coast, but the inner cities all over this country, we've got to come and get a grip of ourselves, and not shill for the financial boys up at Wall Street, and the success of NAFTA by covering up the total failure of this so-called relation in drugs.

As General McCaffrey said, he said, well, this would just cut off any chance to work with our friends. I'm absolutely convinced we've got the wrong friends, and they ought to know that we think they're the wrong friends.

Now, if they're so weak that we are propping them up just on this one little decertification, they ought to get out. Because nothing's going to happen, in spite of all the promises.

On the other hand, we may get something done, because I can tell you here and now we are on the wrong track. It is the same act, same scene.

#### FUNDING REQUEST FOR CHINA

Going to China, Madam Secretary, you only asked for \$3 million. And Jim Sasser has got in this little book, “China 2000”, has a need for \$95 million in the short term. The truth is that our facilities are an embarrassment.

I was in China last year. The United States is using the old Pakistani facilities that we got back in the seventies. And Ambassador Sasser outlined a need there for some \$95 million, if I remember correctly. And your fiscal year 1998 budget asks for only \$3 million. That's a drop in the bucket. You can't start to do anything.

It's not just the wife having to do the cooking, because I know Miriam, and she does good cooking; \$89 to 95 million. You can see his little chart there.

Secretary ALBRIGHT. I've seen it. I've been there. Yes.

Senator HOLLINGS. You've been there. Well, then I know you sympathize with me. Let's you and I both get on OMB and the White House.

Senator GREGG. On that point—

Senator HOLLINGS. Yes, sir.

Senator GREGG. Am I incorrect in understanding that you're using some of the money which you plan to generate from selling these properties, and the priority of the first of that money is China?

Secretary ALBRIGHT. Yes; that is correct. Part of the issue here is that we hope to be able to finance a large part out of asset sales in other parts of the world. But because one can't always gear ex-

actly the right time to sell, we have to make sure that we're selling at a good price in other places.

And China, we plan to fund the major portion of this out of other asset management sales. But I agree with you. It is pretty miserable.

#### RETENTION OF FEES PROPOSAL

Senator HOLLINGS. With respect, I would get back to the old accounting. We got into that asset sales thing, and that crisis selling, downtown Buenos Aires and a lot of good valuable properties, because we can make a heck of a lot of money and satisfy budget problems in the short run, but it is very, very damaging to the Department of State and the United States of America in the long run.

Specifically these fees, there, \$140 million in visa fees. Now collected and retained by the Department. But under this budget they would go on budget, and instead of going to the State Department, we would have to increase your budget just to keep you in place.

So that's the kind of—this is OMB shenanigans, on China, on selling property, on visa fees. If you let those number crunchers take you all, that's why—well, let's go right to the point.

The President's budget proposes a \$1 billion increase in foreign aid, and they give you \$60 million, to the Department of State. AID gets an almost 9-percent increase, and you get a mere 2 percent, which does not keep up with inflation.

Secretary ALBRIGHT. You are asking something very difficult of me, Senator. The fact is that for American foreign policy purposes, we need a full budget, which requires aid as well as the people to dispense it.

We are trying very hard to maximize the money that we can get. We have this proposal, actually, that most fees be returned to the State Department. We hope that now 25 percent of our budget will, in fact, come from this new fee proposal.

Because it links the resources to the people that actually do the job. So we are trying very hard to live within a balanced budget, and to try to maximize what we have.

And it's not easy, but we have to prioritize and do what we can. I am very admiring of our diplomatic service, who have made a career choice that is a very difficult one, and I want to do everything I can to support them.

So I appreciate your support of them also.

#### CONSOLIDATION OF THE STATE DEPARTMENT

Senator HOLLINGS. Well, as I said a little bit earlier, Pat Kennedy and Richard Greene have worked hard in developing that international cooperative administrative system and charging these other departments.

Why not embellish that even further by adding telecommunications and facilities? We ought to be charging agencies for that, too.

Because I am the admirer of you and the Department, and what I want to do is get every dime we can over here, because they have foreign aid getting a \$1 billion increase, and you're supposed to be in charge of foreign policy. We've got the tail wagging the dog.

What about Senator Helms' proposition to bring AID and all of that disparate group under the Secretary? Because once when I traveled to Africa, they said they think the Ambassador down there is in charge, but we're in charge up here with AID.

I see that, as a lay Senator, going around. That's no way to get a good, strong Secretary going like yourself.

Secretary ALBRIGHT. You're trying to—

Senator HOLLINGS. Well, I learned this like you, from Muskie. [Laughter.]

Secretary ALBRIGHT. Now, let me say that obviously there is a question as to how to reorganize and reinvent, and, as I said when I testified at my confirmation hearings, I have an open mind.

We are now looking at a variety of ways to see how we could make everything more efficient for pursuing American interests. I will be back to all of you on that. But I think it is important to streamline and organize ourselves for the kinds of issues and threats, problems that we're now dealing with. And we must prepared for the 21st century as other Senators have said.

So I appreciate very much what you are saying.

Senator HOLLINGS. Thank you, ma'am. And I hope you can help persuade some over in the White House, because it was going good. We had Democrats on the Foreign Relations Committee that were going and moving along with Chairman Helms on this initiative, and then the White House came around, and failed it before it could get started.

But it is a good move to get you better coordinated and working. Mr. Chairman, you have been very indulgent of me, and I have some other questions, and I have them just for the record.

Thank you very, very much.

Senator GREGG. Let me follow up. First, I want to endorse Senator Hollings' view of going forward with reorganization. Vice President Gore had it right the first time, and we should bring the Arms Control and Disarmament Agency [ACDA] and AID under your control. There is no reason we should have these agencies outside of the control of the Secretary of State. It is clear you should have operational control over what is essentially foreign policy. When you come back with your reorganization plan, we hope you will make this committee happy along with Foreign Affairs.

Senator HOLLINGS. You're a strong Secretary. You can get it done.

#### RETENTION OF FEES PROPOSAL

Senator GREGG. That's right. On the fee issue, I see this as a potential major problem for your Department. What OMB has done is play games with these fees. I am not sure how Senator Domenici is going to handle this, but knowing Senator Domenici, he is not going to tolerate it. As a result, you may end up with a \$455 million hole in your budget because of what OMB has done here.

Now, theoretically this can be avoided, and subsequently can be avoided, if we get the proper allocation. But this is a big problem. I think OMB has set you up, along with a number of other groups. I do not expect you to say they have—but they have.

Secretary ALBRIGHT. Well, on the subject, let me just say that we recognize the fact that this is a complex proposal. It is Govern-

mentwide. And it is something that OMB is dedicated to, and will be pushing very hard for. I think that we see no reason that this proposal will fail. As I said, it's too big to fail.

Senator GREGG. The reason it will fail is because it's an accounting mechanism to raise the discretionary caps by \$3 billion across the Government. We're not going to do that.

Secretary ALBRIGHT. But actually, Mr. Chairman, we need to talk more about it. We see it as kind of a good Government approach, which is to link the resources to the people that actually do the work. What this means, for instance, in our case, is that when more people want visas and passports, which require more people to do it, there will be a direct resource link with the fact that Americans are traveling abroad much more, and that they need more assistance. The fee proposal creates a link between those who take in the fees and those who actually do the work.

Senator GREGG. I would agree with that, if it hadn't been used for the purposes of basically arbitrarily raising the discretionary caps. And that is the goal. It wasn't good Government. If they wanted to do good Government, they wouldn't have ended up with a cap. But that's another issue. I just think you have got to be sensitive. Hopefully, we'll get the allocation in this, so we will not have to deal with that problem.

#### ADVANCE APPROPRIATION FOR ARREARAGES

In another area, just like this, that creates all sorts of budgetary issues for us is the \$921 million advance appropriation. That's essentially an attempt to get us out of this budget window, which means it will be outside of aggravating this year's deficit projection. It becomes a problem for us, even if we were to agree to it. There's great resistance to doing it, because we'd have next year on our plate. So we are working on this, and our intention is to reach an agreement that everybody is comfortable with.

I think we've got to come up with a way to fund the \$921 million outside of the advanced appropriation. I have looked through your budget and it does not appear to me that we have an extra \$921 million sitting anywhere. We are going to have to look for some places to find some money. That's the way I see it in order to do this. And I was thinking the Advanced Technology Program might do about one-third of this, right? There are other departments we could look at.

The National Endowment for Democracy would be a nice way. But this is something that we're going to have to work on. It is a real problem, where we get the money. As I have said, we're going to come up with some system that I think will address your problems, but finding the money is going to be a big issue.

Secretary ALBRIGHT. I appreciate very much your desire to want to work with us. I think that the issue here is to try to figure out a mechanism that will allow us to let the people in New York know that we are going to push for the reform, and that the money is there, if they reform.

This is the mechanism that we have thought of. I think we are very appreciative of the fact that we are working in various groups to try to resolve this, because I think we now all understand the necessity of getting a United Nations that functions better for all

of us, and makes it easier for people that are negotiating for the United States to have something in their back pocket that provides the leverage that you need for this kind of negotiation.

Senator GREGG. I guess my caveat to you is you need to have your people who are thinking along these terms, think about where to find this money if we go into advance funding. It's obviously subject to some sort of fencing agreement, but there has to be the money.

#### CAPITAL INVESTMENT FUND

I notice you have \$40 million in your budget for an increase in funding for technology. You call it capital improvement or something like that, but I think it's mostly technology, rising from \$27 million to \$60 something million. Is that for your communications systems primarily?

Secretary ALBRIGHT. Yes; it's an attempt to modernize ourselves in terms of trying to get better communications, generally technology improvements. It's part of our whole management effort.

Senator GREGG. Now, is there another bill that's going to come to us next year on this? Is this the last payment on upgrading communications systems?

Secretary ALBRIGHT. This is an ongoing improvement. We will get to you what is coming on. But we are trying to do it systematically.

We are also going to try, as Senator Hollings was getting at, to cooperate on our technology systems together. It is appalling that we have a diplomatic service every place in the world, but we do not have adequate modern ways of communicating. For example, we have to update our e-mail systems and generally—

Senator GREGG. I don't argue the need—I think the need is important. I don't even argue that amount. I am going to try, with Senator Hollings, to fund the whole amount.

I am wondering about what the out-year plan is.

Secretary ALBRIGHT. We have provided our overall information plans.

Senator GREGG. How much technology are you planning to buy? Whether you are going to buy it in some sort of orderly fashion? We've had some problems with other agencies who have bought technology that did not work. We don't want to go through that with you. So do we have somebody looking at how this is being purchased? Or is it being done in house? There are big problems where it's being done in house with another agency. They probably should have gone over to the Defense Department to use some of their expertise in how to buy this stuff. I would be interested in knowing about your plans.

Secretary ALBRIGHT. Let me have some of my experts talk to you.

Senator GREGG. OK.

#### IMPORTANCE OF STATE'S ECONOMIC OFFICERS

Senator HOLLINGS. Of course, the Secretary did say NED. Years ago I thought it was killed, but then you got the printing presses in Indiana, over into Europe, and it helped create free elections.

But on a very important subject that you run into on the House side, that Chairman Gregg and I see it, with respect to the State

Department economic counselors, and the Commerce Foreign Commercial Service attachés, both are needed in my judgment.

What happens is the Foreign Commercial Service is of a character, the chamber of commerce is there, meeting, greeting, out trying to get information for exports and getting visiting business folks there to help them get contracts.

The economic counselor does an outstanding job in counseling with respect to these trade agreements, the far more sophisticated and otherwise. But the House has tried to get rid of the economic counselors under our budget.

And I want to keep that economic service going, because there is a very strong move of the multinationals to get rid of them, because they interfere with this give it all away and everything else like that.

It shows itself in the Multinational Times, the New York Times. The membership for China here, the concluding sentence says, congressional interference serves no good purpose.

Here under article I, section XVII of the Constitution, not the Executive, not the Supreme Court, but the Congress shall regulate foreign commerce. And yet they got the arrogance to say that we interfere.

Senator GREGG. New York attitude.

Senator HOLLINGS. Yeah, that's exactly right. So that attitude is against your economic counselors, and they do an outstanding job in helping us with trade matters, and getting these agreements.

Thank you, very, very much, Mr. Chairman.

Secretary ALBRIGHT. I think, Senator Hollings, in my most recent travels around, I can see more and more the importance within our Embassies of economic activities, whether they be the analytical ones that are necessary, or those that are out really helping American business.

So I also know a lot about the commerce clause. So I do not see this as interference.

Senator GREGG. Well, we appreciate your time. I do want to reinforce that this \$900 million is not going to fall out of the sky, as is proposed by the present budget. And we're going to have to find some way to get it.

#### ADDITIONAL COMMITTEE QUESTIONS

But I certainly do appreciate your taking your time to come today.

Secretary ALBRIGHT. Thank you very much, Mr. Chairman. I appreciate it.

[The following questions were not asked at the hearing, but were submitted to the Department for response subsequent to the hearing:]

#### QUESTIONS SUBMITTED BY SENATOR PETE V. DOMENICI

##### STATE DEPARTMENT REORGANIZATION

*Question.* My question to you Madam Secretary is, do you agree with my assessment of the need for reorganization and consolidation of the U.S. foreign policy apparatus?

*Answer.* Given the many changes and the new challenges we face after the Cold War and as we approach the Twenty-first Century, I agree that we need to reinvent the foreign affairs agencies and that this will require some integration of agencies

into the State Department, as it will also require significant changes within our Department itself. I also agree that such efforts can free up some resources for reinvestment into the infrastructure and other shortfalls faced by the State Department. But I would caution against any belief that organization changes can provide major savings.

*Question.* As you know, the authorizers are ready to start on a bill. What schedule do you plan to follow with respect to submitting a reorganization plan to Congress?

*Answer.* On April 18, the President released the attached fact sheet setting forth his plan for reintegrating and reinventing the foreign affairs agencies. The Administration proposes to submit a plan for implementing these changes within 120 days from May 1. The Administration's plan will call for integrating ACDA into the State Department within a year from when the above mentioned plan is completed, to integrate USIA into the State Department within two years, and to integrate some specified USAID function into the State Department. As part of this plan, we will also undertake major reinvention efforts within the State Department. Since broad legislative authorities will be needed the Administration has also submitted the following legislative provisions to the authorizing committees which we wish to see enacted as soon as possible.

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[White House Press Release Fact Sheet]

THE WHITE HOUSE,  
OFFICE OF THE PRESS SECRETARY,  
April 18, 1997.

#### REINVENTING STATE, ACDA, USIA AND AID

THE ERA OF BIG GOVERNMENT IS OVER.—BILL CLINTON

President Clinton's plan brings an end to bureaucracies originally designed for the Cold War, streamlines the Executive Branch's policy-making process, and enhances our nation's ability to meet the growing foreign policy challenges of the 21st century. It puts matters of international arms control, sustainable development, and public diplomacy where they belong, at the heart of our foreign policy within a reinvented Department of State. It incorporates key lessons from the private sector.

##### *The Plan:*

The State Department will undertake a new round of internal reinvention to incorporate new organizations and to manage new responsibilities. This reinvention will make the new State Department more effective and efficient and better able to defend American interests and promote American values abroad.

The Arms Control and Disarmament Agency will be fully integrated with State within one year by merging both agencies' related arms control and nonproliferation functions. The ACDA Director will be double-hatted as the Under Secretary of State for Arms Control and International Security Affairs, and then the two positions will be merged as Under Secretary/Senior Advisor to the President and Secretary of State, which will be able to communicate with the President through the Secretary of State. ACDA's unique advocacy role will be preserved and the policy process supporting those efforts will be strengthened through additional interagency responsibilities. Along with ACDA's technical and policy expertise, its verification, compliance, and legal functions will be preserved.

The United States Information Agency and the State Department will be integrated over a two year period. During that process, the Director of USIA will be double-hatted as the new Under Secretary of State for Public Diplomacy. This process will likely begin with an integration of related functions, such as legislative and public affairs; after that, the integration process will turn toward USIA's overseas press expertise and State's press offices. The distinctiveness and editorial integrity of Voice of America and the broadcast agencies will be respected. A new bureau will be created within the State Department to handle cultural and exchange issues.

The Agency for International Development will remain a distinct agency, but will share certain administrative functions with State and will report to and be under the direct authority and foreign policy guidance of the Secretary of State. Within two years, AID will integrate its press office and certain administrative functions. The International Development Cooperation Agency, created in 1979, will be abolished. The Secretary of State and AID administrator will recommend what further steps might be taken to eliminate duplication.

The President's plan was the result of a long and deliberative process under the leadership of Vice President Gore. This reorganization plan enjoys the support of the

Secretary of State and the heads of ACDA, AID and USIA. In developing this plan, the Vice President worked from three guiding principles:

The programs of ACDA, USIA, and AID must be preserved. Sustainable development, nonproliferation, and public diplomacy are now more central than ever to American foreign policy; our institutional arrangements should reflect that. Moreover, there is no better time than the present to launch this process, at the outset of a new term, a new Congress, and with a new Secretary of State.

Complexities must be fully acknowledged. Reinvention and integration should take into account the central and continuing importance of reform of all of the agencies including the State Department, the relative complexity of the smaller agencies and anticipated level of difficulty in merging and integrating them, and the need to preserve the unique skills and capabilities inherent in each of the agencies. Any reorganization plan should be designed around our greatest strength—the abilities and expertise of the dedicated public servants who work in those agencies.

The Executive and Legislative Branches must cooperate on foreign affairs. The need for reorganization in the foreign policy agencies is also recognized by key members of Congress. Their views and expertise on these matters should inform our process. Our ability to work together with the Congress on this endeavor should encourage our bipartisan approach toward foreign policy matters.

After much deliberation, the plan the Vice President devised strikes a sound balance between the need for greater policy coherence and effectiveness with the necessity of preserving the special missions and skills of the three smaller agencies.

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#### AMENDMENT REGARDING REINVENTION OF THE FOREIGN AFFAIRS AGENCIES

(a)(1) Strike Title II of Division A and renumber the subsequent titles and sections accordingly.

(2) Strike the following sections, for the purpose of conforming Division B to this amendment, and renumber the remaining provisions accordingly: 1301, 1303, 1304, 1305, 1306, 1321, and 1707.

(b) Insert the following new title at the end of Division B:

#### TITLE XVIII—REINVENTION OF THE FOREIGN AFFAIRS AGENCIES

##### SEC. 1801. SHORT TITLE.

This Title may be cited as the “Foreign Affairs Agencies Reinvention Act of 1997.”

##### SEC. 1802. REINVENTION OF THE FOREIGN AFFAIRS AGENCIES.

The Congress of the United States makes the following findings:

(1) With the end of the Cold War, the international challenges facing the United States have changed, but the fundamental national interests of the United States have not. The security, economic and humanitarian interests of the United States require continued American engagement in international affairs. The leading role of the United States in world affairs will be as important in the twenty-first century as it has been in the twentieth.

(2) In this context, the United States has an historic opportunity to continue the reinvention of the agencies primarily responsible for implementing the nation’s foreign policies.

(3) The continuing reinvention of the foreign affairs agencies, the Department of State, the Arms Control and Disarmament Agency, the United States Information Agency, the International Development Cooperation Agency and the United States Agency for International Development, must ensure that these agencies can effectively confront the new and pressing challenges of the post-Cold War world.

(4) The reinvention of the foreign affairs agencies recognizes the fact that arms control and nonproliferation, sustainable development, and public diplomacy are now more central than ever to the success of U.S. foreign policy. Any integration of these agencies should preserve the unique skills and capabilities of each of the agencies in a reinvented Department of State.

(5) A streamlined, reorganized and more flexible foreign affairs structure under the strengthened leadership of the Secretary of State can more effectively promote the international interests of the United States and enhance the United States’ ability to meet the growing foreign policy challenges during the next century.

##### SEC. 1803. PURPOSES.

The purposes of this title are—

- (1) to provide for the reinvention of the Department of State to enable it better to incorporate additional functions and agencies, manage new responsibilities, and make the Department more effective and efficient and better able to defend American interests and promote American values abroad;
- (2) to integrate certain agencies and certain functions of other agencies of the United States into the reinvented Department of State; and
- (3) to strengthen—
  - (A) the coordination of United States foreign policy; and
  - (B) the leading role of the Secretary of State in the formulation and articulation of United States foreign Policy.

**SEC. 1804. DEFINITIONS.**

For the purpose of this title—

- (1) “agency” means the Department of State, the Arms Control and Disarmament Agency, the United States Information Agency, the International Development Cooperation Agency, and the Agency for International Development;
- (2) “reorganization” means integration, transfer, consolidation, coordination, authorization, or abolition, referred to in section 1805 of this title; and
- (3) “officer” is not limited by section 2104 of Title 5 of the United States Code.

**SEC. 1805. REORGANIZATION PLAN FOR REINVENTING THE FOREIGN AFFAIRS AGENCIES.**

(a) No later than 120 days after the enactment of this Act, the President shall submit to the Congress a reorganization plan for the foreign affairs agencies specifying the reorganization of the Department of State, the Arms Control and Disarmament Agency, the United States Information Agency, the International Development Cooperation Agency, and the Agency for International Development. Such plan may provide for—

- (1) the transfer of the whole or a part of an agency, or of the whole or a part of the functions thereof, to the jurisdiction and control of the Department of State;
- (2) the abolition of all or a part of the functions of an agency, except that no enforcement function or statutory program shall be abolished by the plan;
- (3) the consolidation or coordination of the whole or a part of an agency, or of the whole or a part of the functions thereof, with the whole or a part of another agency or the functions thereof;
- (4) the consolidation or coordination of a part of an agency or the functions thereof with another part of the same agency or the functions thereof;
- (5) the authorization of an officer to delegate any of the officer’s functions; or
- (6) the abolition of the whole or a part of an agency which agency or part does not have, or on the taking effect of the plan will not have, any functions.

(b) Such plan shall provide that—

- (1) with respect to the Department of State, the Department shall undertake a new round of internal reinvention to incorporate new organizations and to manage new responsibilities;
- (2) with respect to the Arms Control and Disarmament Agency—
  - (A) within one year of the effective date of the reorganization plan for the foreign affairs agencies, the Arms Control and Disarmament Agency shall be fully integrated with the Department of State by merging both agencies’ related arms control and nonproliferation functions;
  - (B) the positions of the Director of the Arms Control and Disarmament Agency and the Under Secretary of State for Arms Control and International Security Affairs shall be merged as the Under Secretary/Senior Advisor to the President and the Secretary of State, which will be able to communicate with the President through the Secretary of State;
  - (C) the Arms Control and Disarmament Agency’s unique advocacy role shall be preserved and the policy process supporting those efforts will be strengthened through additional interagency responsibilities; and
  - (D) along with the Arms Control and Disarmament Agency’s technical and policy expertise, its verification, compliance, and legal functions shall be preserved;
- (3) with respect to the United States Information Agency—
  - (A) within two years from the effective date of the reorganization plan for the foreign affairs agencies, the United States Information Agency and the Department of State shall be integrated;
  - (B) a new Under Secretary for Public Diplomacy shall be established; and
  - (C) the distinctiveness and editorial integrity of the broadcast entities shall be respected; and
- (4) with respect to the United States Agency for International Development—

(A) the Agency shall remain a distinct agency, but shall share certain administrative functions with the Department of State and report to and be under the direct authority and foreign policy guidance of the Secretary of State;

(B) within two years from the effective date of the reorganization plan for the foreign affairs agencies, its press office and certain administrative functions shall be integrated with the Department of State; and

(C) the International Development Cooperation Agency shall be abolished.

(c) The President shall have the reorganization plan for the foreign affairs agencies delivered to both Houses on the same day and to each House while it is in session. If either House is out of session at the end of the 120 days after the enactment of this Act, the plan shall be submitted on the first day thereafter when both Houses are in session. The President's message shall include an implementation section which shall (1) describe in detail (A) the actions necessary or planned to complete the reorganization, (B) the anticipated nature and substance of any orders, directives, and other administrative and operational actions which are expected to be required for completing or implementing the reorganization, and (C) any preliminary actions which have been taken in the implementation process, and (2) contain a projected timetable for completion of the implementation process. The President shall also submit such further background or other information as the Congress may require for its consideration of the plan.

(d) Any time during the period of 60 calendar days after the date on which the plan is transmitted to it, but before any joint resolution described in section 1809 has been ordered reported in either House, the President may make amendments or modifications to the plan, consistent with sections 1805–1807 of this title, which modifications or revisions shall thereafter be treated as a part of the reorganization plan originally transmitted and shall not affect in any way the time limits otherwise provided for in this title.

#### SEC. 1806. ADDITIONAL CONTENTS OF REORGANIZATION PLAN.

A reorganization plan for the foreign affairs agencies transmitted by the President under section 1805 of this title—

(1) may provide for the appointment and pay of one or more officers of any agency, including appointment of additional Under Secretaries and Assistant Secretaries (not to exceed the number, respectively, of officers authorized at Executive Levels III and IV of the transferring agencies), if the President finds, and in his message transmitting the plan declares, that by reason of a reorganization made by the plan the provisions are necessary;

(2) shall provide for the transfer or other disposition of the records, property, and personnel affected by a reorganization;

(3) shall provide for the transfer of such unexpended balances of appropriations, and of other funds, available for use in connection with a function or agency affected by a reorganization, as the President considers necessary by reason of the reorganization for use in connection with the functions affected by the reorganization, or for the use of the agency which shall have the functions after the reorganization plan is effective;

(4) shall provide for terminating the affairs of an agency abolished;

(5) may provide that provisions of law applicable to a transferring agency remain applicable only to transferred functions of that agency; and

(6) shall designate which provisions of law requiring the establishment of specified positions are no longer effective.

If the reorganization plan for the foreign affairs agencies transmitted by the President contains provisions required by paragraph (3) of this section, such plan shall provide for the transfer of unexpended balances only if such balances are used for the purposes for which the appropriation was originally made or for the purpose of reorganization.

#### SEC. 1807. LIMITATION ON POWERS.

The reorganization plan for the foreign affairs agencies submitted under this title may not provide for, and a reorganization under this title may not have the effect of—

(1) creating a new executive department or renaming an existing executive department, or abolishing or transferring an executive department or all the functions thereof;

(2) authorizing an agency to exercise a function which is not expressly authorized by law at the time the plan is transmitted to Congress; or

(3) creating a new agency which is not a component or part of an existing agency.

**SEC. 1808. REFERRAL OF PLAN AND JURISDICTION OVER RESOLUTIONS.**

The reorganization plan for the foreign affairs agencies submitted pursuant to this title and any joint resolution with respect to such plan shall be referred to the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House (and all joint resolutions with respect to the such plan shall be referred to the same committee) by the President of the Senate or the Speaker of the House of Representatives, as the case may be.

**SEC. 1809. EFFECTIVE DATE, DISAPPROVAL AND PUBLICATION OF REORGANIZATION PLAN FOR THE FOREIGN AFFAIRS AGENCIES.**

(a) Except as provided under subsection (c) of this section, a reorganization plan shall be effective upon such date as the President shall determine to be appropriate and announce by notice published in the Federal Register, which date may be not earlier than 120 calendar days after the President has submitted the reorganization plan for the foreign affairs agencies, and such plan shall become effective then only if the Congress does not enact prior to that date a joint resolution disapproving the plan.

(b)(1) Any joint resolution disapproving the reorganization plan for the foreign affairs agencies shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

(2) For the purpose of expediting the consideration and enactment of any joint resolution disapproving the reorganization plan for the foreign affairs agencies, a motion to proceed to the consideration of any such resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

(c) Under provisions contained in a reorganization plan for the foreign affairs agencies, any provision thereof may be effective at a time later than the date on which the plan otherwise is effective.

(d) A reorganization plan for the foreign affairs agencies which is effective shall be printed (1) in the Statutes at Large in the same volume as the public laws and (2) in the Federal Register.

**SEC. 1810. EFFECT ON OTHER LAWS, PENDING LEGAL PROCEEDINGS, AND UNEXPENDED APPROPRIATIONS.**

(a) A statute enacted, and a regulation or other action made, prescribed, issued, granted, or performed in respect of or by an agency or function affected by a reorganization under this chapter, before the effective date of the reorganization, has, except to the extent rescinded, modified, superseded, or made inapplicable by or under authority of law or by the abolition of a function, or otherwise by operation of the reorganization plan for the foreign affairs agencies under this title, the same effect as if the reorganization had not been made. However, if the statute, regulation, or other action has vested the functions in the agency from which it is removed under the reorganization plan, the function, to the extent which it is to be exercised after the plan becomes effective, shall be deemed as vested in the agency under which the function is placed by the plan.

(b) For the purpose of subsection (a) of this section, "regulation or other action" means a regulation, rule, order, policy, determination, directive, authorization, permit, privilege, requirement, designation, or other action.

(c) A suit, action, or other proceeding lawfully commenced by or against the head of an agency or other officer of the United States, in his official capacity or in relation to the discharge of his official duties, does not abate by reason of the taking effect of a reorganization plan under this title. On motion or supplemental petition filed at any time within twelve months after the reorganization plan takes effect, showing a necessity for a survival of the suit, action, or other proceeding to obtain a settlement of the questions involved, the court may allow the suit, action, or other proceeding to be maintained by or against the successor of the head or officer under the reorganization effected by the plan or, if there is no successor, against such agency or officer as the President designates.

**UNITED NATIONS**

*Question.* If I may call on your expertise to help Congress prioritize the various reforms that still need to be implemented, Madam Secretary, could you give us a brief overview of the fundamental reforms you see that could contribute the most to a more efficiently run United Nations.

*Answer.* The Administration has proposed that the U.N. achieve specific reform measures in the areas of budget, personnel, oversight, management, and peacekeeping. These include:

- Reduced U.S. assessment rates, budget cuts and budget freezes in the U.N. system to reduce U.S. total obligations.
- A cap of 25 percent on U.S. peacekeeping assessments.
- Creation of a “contested arrears” account for U.N. charges which the U.S. disputes.
- A code of conduct for U.N. employees.
- Further U.N. staff reductions.
- Strengthening the Office of Internal Oversight Services and other oversight mechanisms, particularly in the major U.N. specialized agencies.
- Improving U.N. effectiveness by restructuring and prioritizing, especially in the economic and social areas.
- Further improving management of peacekeeping operations by:
  - Implementing a uniform, transparent, less costly Contingent-Owned Equipment reimbursement standard.
  - Negotiating more contingency contracts to support and expedite deployment of peacekeeping operations.
  - Improving recruitment and training of civilian police.

On March 17, the Secretary General announced ten specific U.N. reform measures for immediate implementation, including a reduction of \$123 million in the regular budget for 1998–99, a merger of three departments in the U.N. Secretariat, and a code of conduct. We strongly support these efforts, and look forward to a second phase of reform proposals by mid-year.

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#### QUESTIONS SUBMITTED BY SENATOR KAY BAILEY HUTCHISON

*Question.* Would it not make more sense to downsize some of our missions in more luxurious European locations so that we can establish a small and effective presence in some of the world’s emerging markets? Are you willing to work with the Committee to respond to the concerns of providing diplomatic support for American citizens working and living in Equatorial Guinea and other emerging markets?

*Answer.* Our Embassy in Malabo was closed in October 1995 due to budgetary constraints. Since that time we have had to close a number of other small posts, such as the Embassy in Victoria, Seychelles and the Consulate General in Bordeaux, France, as well as downsize the State Department’s component at many other, larger posts, including those in Europe. The reason for these very difficult steps is simply the lack of sufficient overall funding for our operations.

With regard to Equatorial Guinea, Ambassador Charles Twining in Yaounde is also accredited to the Government of Equatorial Guinea, and he has made numerous visits to Malabo and to the Rio Muni on the continent since arriving at post fifteen months ago. He has direct access to President Obiang and key government ministers. In addition, the chief of Embassy Yaounde’s consular section has been designated as “Malabo watcher”. He is fluent in Spanish and has also visited Malabo and Rio Muni many times to meet with American citizens, both oil company employees and missionaries. He organized the warden systems in both areas of Equatorial Guinea. The commercial officer has also visited our oil companies in Malabo. In all, the Ambassador and his staff have made over twenty-five visits to Equatorial Guinea since the closure.

The Department is concerned with meeting fully the needs of our American citizens in Equatorial Guinea and with supporting our expanding commercial interests there. We have been considering alternatives to the present level of representation.

I want very much to work with the Committee to assure appropriate diplomatic and consular representation to meet the needs of our people. I must tell you frankly, however, that only adequate funding will enable us to have as expansive a presence in all regions of the world as we might like.

#### LATIN AMERICAN ARMS SALES POLICY

*Question.* We have a policy [for] 20 years dating to the Carter Administration of blocking the export of advanced arms sales to Latin America. There has been a fundamental change in the regimes of the region and I don’t think our current policy adequately reflects that change. Since 1976, when the policy was implemented, democratically elected governments have driven out dictatorships throughout Latin America with the exception of Cuba. The policy of restricting the sale of advanced arms to Latin America has had the effect of blocking only American firms from the market place. In the past 20 years France alone has sold 200 fighter aircraft to seven Latin American countries. In the past 12 months, Peru bought 12 Mig 29’s, Ecuador bought [a] small number of Israeli KFIRS with potential for additional sales and Chile bought 20 Mirages.

These countries will modernize regardless of American policies. The actions this administration takes in the next few months will determine American defense industry's role in Latin America for the next 25 years and there will be a spillover which will impact commercial industries as well. I am afraid that continuing this policy of restricting certain arms sales is anachronistic and patronizing. There are very good strategic reasons why it is in America's interest to ensure American defense industry is represented. I am interested in your views on this situation and if it is your intention to promote American interests by quickly mov[ing] to rescind this policy [which] prohibits the sale of advanced arms to Latin America?

Answer. The USG has decided to authorize the issuance of marketing licenses to companies which wish to compete in Chile's selection of fighter aircraft, while making clear to both the GOC and to the companies involved that the licenses are for marketing information only and do not constitute approval for an actual sale. A decision whether to permit such a sale has not been made. This decision to issue marketing licenses was made so as not to disadvantage U.S. companies in the competition. These licenses allow these companies to provide the Government of Chile with technical data on advanced fighter aircraft.

As you know, the Administration is reviewing U.S. conventional arms transfers toward Latin America in the context of the significant political, economic, and military changes that have been occurring in the past ten years. This review is ongoing. The welcome expansion and strengthening of democracy and democratic institutions in recent years makes it prudent for us to undertake this policy review at this time.

Our policy worldwide is to consider pending arms transfers on a case-by-case basis. Our long-standing policy in Latin America is, and will continue to be, to address potential transfers in the context of restraint.

Our enduring goals for the countries of Latin America are to enhance democracy including civilian control of the military, to foster regional stability, transparency and confidence building, and to ensure that the weapons modernization decisions of these countries address legitimate defense needs within their existing economic resources.

#### NATO ENLARGEMENT

*Question.* I realize that prospective new members have worked among themselves to satisfy long-standing borderland ethnic disputes, but I am concerned that NATO has no process by which such disputes could be managed once these countries enter the alliance. Our experience with some current members of NATO should make us particularly cautious that we not repeat circumstances we were forced to accept during the Cold War but which we need not accept now. Will you insist that NATO develop and establish a dispute resolution mechanism as a principal condition of NATO entry for new members?

Answer. No, we do not believe that a formal dispute resolution mechanism would be appropriate within NATO. While common membership in NATO has contributed to resolving longstanding differences among Allies, the U.S. has consistently opposed efforts to inject such disputes into NATO fora and we have cautioned certain Allies against using NATO institutions to further bilateral aims. Considering such disputes in NATO could impede consensus decision-making and could poison the atmosphere during discussions of Alliance policy. At the same time, the goal of NATO membership has moved some of those states who have indicated an interest in NATO membership to negotiate and resolve bilateral differences.

While all NATO Allies share a common interest to preserve Alliance cohesion and effectiveness, we believe it is incumbent upon all NATO Allies to work creatively to resolve differences between them.

*Question.* The Administration estimates the cost of expansion at \$35 billion over the next 12 years, including a \$2.5 billion U.S. share. The Congressional Budget Office estimates that the U.S. share of the costs during a similar time will be between \$4.8 billion and \$18.9 billion. How do you explain this discrepancy?

Answer. The Administration's study and the CBO study were based on different assumptions. The Administration's cost estimates were based on certain assumptions about the projected European security environment, the military implications and associated costs of NATO adaptation, and the countries which will be invited to join the Alliance. The Administration used a capabilities-based analysis to ascertain the costs of developing the kinds of military capabilities that the Alliance, both new members and current ones, would need in the context of the current European security environment.

The Administration's study projects a security environment in Europe over the period 1997–2009 similar to what exists today. In particular the study notes that realistic threat estimates show that a direct conventional threat to new members is un-

likely for the foreseeable future and would take many years to develop, if at all. If the security environment were to change significantly for the worse, the costs would certainly rise. We do not anticipate that happening.

The CBO study assumed a much more difficult threat environment, requiring significantly different force levels and postures.

*Question.* All previous expansions (Greece, Turkey, Germany, and Spain) have required Senate advice and consent. At what point in this process will the Senate be asked for its advice and consent of the expansion?

*Answer.* The accession negotiations for those countries invited to begin them at the July 1997 NATO Summit in Madrid should be concluded by the NATO Ministerial meeting in December. The result of those negotiations will be one or more instruments of accession signed by all NATO Allies, which, as in the case of previous new members, will be submitted to the Senate for advice and consent to ratification. We would therefore anticipate beginning the ratification process with the Senate in early 1998. After all Allies have ratified the instrument, the new members will themselves sign and ratify the amended Washington Treaty. During this process the Administration will continue to consult closely with the Congress.

*Question.* Our objective is to strengthen economic freedom and security in Europe. We might be able to advance that cause by using the EU as a de facto European component of NATO that would properly link these two organizations in a way that they have not been linked before. We know that at least one EU member, Turkey, is so concerned about being left out of the EU that it may oppose NATO expansion. Clearly, our goal of continued American leadership and strong European allies would not be advanced if that were to happen. Why wouldn't we use EU membership as a guide to NATO expansion?

*Answer.* The EU and NATO fulfill complementary purposes. The EU ensures its members' political and economic integration, while NATO supports its members, defense and security integration. But one is not a substitute for the other nor can a prospective candidate for membership in one necessarily also meet the membership criteria in the other. NATO views its own enlargement process as mutually supportive of and parallel to the EU's enlargement.

Both NATO and the European Union are embarked upon significant processes of internal and external adaptation aimed at meeting the challenges of the post Cold War era. Both institutions have unique contributions to make in developing a new security structure in Europe.

Joining the economies of central Europe to the EU single market is a massive undertaking. The EU will require its new members to meet numerous complex criteria that have nothing to do with NATO membership. Membership in the Alliance should neither be held up nor accelerated by the progress countries make in this process.

Nor do we believe that EU enlargement alone can solve the security challenges facing Europe and particularly central and eastern Europe. While the EU decides how and when to expand, NATO membership will remain crucial to U.S. interests. NATO is the linchpin of European security and the principal mechanism for American involvement in Europe.

The United States strongly supports the European Union's enlargement process and the objective of integrating new members as quickly as possible. We have also made clear that we do not believe linking NATO enlargement to any Ally's concerns about its relations with Europe or the EU would further our shared goals.

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#### QUESTIONS SUBMITTED BY SENATOR BEN NIGHTHORSE CAMPBELL

##### INTERNATIONAL DRUG TRAFFICKING/HIDTA

*Question.* The State Department's Bureau of International Narcotics and Law Enforcement is charged to break foreign and domestic drug sources of supply, destroy illicit drug crops at their source, pursue drug kingpins, and interdict drugs.

Illegal drug trafficking continues to be a serious problem for the United States. In my home state of Colorado, which the Drug Enforcement Administration has identified as a key cross-country transit point, there has been a significant increase in shipments of marijuana, crack, cocaine, heroin and methamphetamines. One drug kingpin alone is reported to be responsible for smuggling tons of cocaine into Colorado.

To help address this problem, the DEA and the Office of National Drug Control Policy are establishing a High Intensity Drug Trafficking Area, referred to as a HIDTA, in the Rocky Mountain region.

To what extent does the State Department's Bureau of International Narcotics and Law Enforcement work with DEA?

What additional steps can the State Department and its Bureau of International Narcotics and Law Enforcement take to support DEA in its operation of the Rocky Mountain HIDTA?

Will you provide me your assurance today to expand the State Department's role in working with DEA to support the Rocky Mountain HIDTA.

Answer. The State Department's Bureau of International Narcotics and Law Enforcement Affairs (INL) works in close and continuing coordination with DEA at all levels, in Washington and outside the United States. State/INL and DEA are both members of the Inter-Agency Working Group on International Narcotics chaired by the Office of National Drug Control Policy. Both agencies develop policies, programs and budgets in mutual consultation and in coordination with ONDCP, in the policy framework defined by the National Drug Control Strategy. Officers of State/INL and DEA headquarters in Washington work together in a wide variety of other standing and ad hoc interagency groups and committees.

DEA is fully engaged in all preparations by State/INL to represent the United States in global, regional, or bilateral diplomatic contacts, international conferences or negotiations. A DEA agent is assigned by DEA Headquarters to work as liaison officer to INL at the Department of State. In foreign countries, under the authority of the chief of mission, Narcotics Affairs Sections responsible for International Narcotics Control assistance to the foreign government, and DEA Country Offices engaged in cooperative drug enforcement operations with foreign government authorities, consult and cooperate closely. In each mission, the NAS and the DEA Country Office coordinate in preparing the narcotics control annex that is an integral element of the chief of mission's annual mission program plan in every major drug source or transit country.

The most effective support that the Department of State and INL can provide to DEA's operation of the Rocky Mountain HIDTA is to carry out as effectively as possible the assistance programs in foreign countries whose purpose is to reduce the production of illicit drugs abroad and their smuggling to the United States. As a matter of equal importance, the INL program serves to improve the effectiveness of foreign drug law enforcement agencies and institutions with which DEA cooperates operationally abroad. We are committed to the importance of these programs, and will continue to dedicate our efforts to implementing them effectively.

The Department of State will do its utmost to work with DEA in activities that will support the Rocky Mountain HIDTA. These will include implementation of INL assistance programs abroad, and diplomatic advocacy of our national drug control goals with foreign countries. Activities of DEA offices abroad will be similarly supported by the chiefs of mission, State Department and other USG agencies that are also parts of those missions.

#### IMPACT OF INTERNATIONAL CRIME ON THE UNITED STATES

*Question.* The United States has seen within its borders serious levels of Russian Organized Crime, Asian gang activity, international drug trafficking, and money laundering.

The Bureau of International Narcotics and Law Enforcement plays a lead role at the State Department in this area.

What programs currently are operated by the Bureau and other State Department agencies to fight crime which has a direct impact on the United States?

What are some of the successes of the Bureau in fighting crime which has a direct impact on the United States?

Does the State Department have plans to expand the Bureau's law enforcement activities in the coming year? If so, in what ways?

Answer. All of the INL Bureau's programs to combat narcotics trafficking and international crime are designed to fight crime which has a direct impact on the citizens and national security interests of the United States. INL also has responsibility for the development and implementation of \$16.2 million in Freedom Support and SEED Act criminal justice programs. INL works directly with federal, state and local law enforcement and justice agencies to set priorities and carry out training programs abroad. U.S. programs abroad have led directly to the arrests of major Latin American drug traffickers, Asian organized crime figures involved in alien smuggling to the United States, arrests of Russian organized crime figures involved in various financial crimes against American citizens, and seizures of counterfeit U.S. currency abroad.

The Department's Bureau of Diplomatic Security (DS) has fully trained law enforcement agents in many U.S. embassies abroad, and works closely with our do-

mestic passport agencies to investigate the whole range of passport and visa offenses. DS agents have doubled their number of passport and visa fraud related arrests from 256 to 567 last year, a number of which involved terrorists, narco-traffickers, and fugitive felons.

We will continue, and expand where possible, the outstanding bilateral initiatives by federal law enforcement agencies to forge new cooperative relations with law enforcement officials from Russia to Thailand to South Africa to Brazil. Programs stressing the need for rigorous internal controls, offices of professional development, and inspector generals are an important element of our approach. We will expand our programs with foreign law enforcement and bank regulatory agencies to address money laundering and related financial crimes. Programs with strong ATF, FBI and Customs support are underway in Latin America to address the problem of trafficking in small arms and stolen cars. Other commitments to cooperate on the problem of vehicle theft and the return of stolen property have been reached with Poland and through the United Nations with other nations of the NIS and Central Europe.

We are engaging U.S. state and local law enforcement in cooperation with partner universities to expand our programs to train Central European, Russian and Independent States' law enforcement officials in community-oriented policing. These programs in Florida, South Carolina, Kentucky and Vermont will continue to promote the fundamental changes in how law enforcement officials maintain law and order, prevent and investigate criminal activity, including transnational crimes, in a democracy and market economy.

#### DENMARK/BIKER GANGS

*Question.* Recent news reports portray a deadly and startling war between armed biker gangs across Scandinavia, especially in Copenhagen, Denmark. A violent turf war between the Banditos and Hells Angels biker gangs has been raging since the summer of 1993, when the Bandidos moved into the area. What is especially disturbing is their choice of fire power—rocket-launched grenades and automatic weapons.

The Danish Government has called on the United States for help.

In addition to any support provided by the FBI, what additional steps can the State Department take to assist Denmark and the other Scandinavian countries with this serious biker gang war?

Is there a mechanism in the Department of State by which experts—both law enforcement and community leaders—in the United States could be made available through a Technical Assistance program to assist Denmark's police departments and communities?

*Answer.* Embassy reporting on this issue has helped focus attention on the problem. The existence of these gangs, among other organized crime concerns, was an important consideration for the Department as it worked with the FBI to develop its five-year overseas expansion plan, which includes the recommendation to assign a legal attaché to Embassy Copenhagen in fiscal year 1998. Treasury's Bureau of Alcohol, Tobacco and Firearms has also worked extensively with Scandinavian authorities on these gangs and the illegal weapons they use. The Department's Bureau of International Narcotics and Law Enforcement Matters (INL) which works closely with U.S. law enforcement agencies in coordinating the fight against international organized crime, has also sponsored, through the U.N. Crime Division, two major conferences in Europe on stolen vehicles, including motorcycles, and continues to work closely with the National Insurance Crime Bureau (NICB), the FBI, U.S. Customs, and foreign police authorities worldwide to combat the international trade in stolen vehicles.

Through cooperative efforts with our Embassies in the region, USIA, the Department's INL Bureau, and NGO's such as Sister Cities International, U.S. expertise can and is being made available to the Government of Denmark and other concerned governments in the region. Law enforcement attachés at the embassies and TDY personnel work the problem at the cop-to-cop level, and international visitor and guest speaker programs developed by the Embassy, the Department, and USIA can provide political and academic exchanges. INL will continue to work with law enforcement agencies on coordinated efforts to combat trafficking in stolen vehicles and illegal firearms. Additionally, Denmark has seven "Sister City" relationships in the United States that could be more effectively used to exchange law enforcement and broader community expertise in addressing the problem of gang activity. These local and state level cooperative efforts have also proven to be excellent mechanisms for the exchange of expertise and experience.

## ASSISTING OTHER COUNTRIES FIGHT CRIME

*Question.* Many countries around the world are experiencing rising crime rates, increasing violence, and a breakdown in law enforcement.

The seriousness of this issue was addressed by AID Administrator Brian Atwood in his testimony on February 27 before the Foreign Operations Subcommittee. Mr. Atwood stated: "The reality is that most nations in conflict simply lacked the institutional capacity to avoid escalating violence."

The United States has a wealth of expertise in "what works" to fight crime, drugs, and gangs. Experts who have first hand experience in these areas—from law enforcement and community based organizations—could be invaluable resources to other countries experiencing these problems if some technical assistance were available. This assistance could be provided on a reimbursable basis, where appropriate.

The State Department's Bureau for International Narcotics and Law Enforcement operates a Training and Technical Assistance Program which helps governments in Central Europe and the New Independent States with organized crime, financial crime and drug trafficking.

Does the Bureau plan to expand the scope of its Training and Technical Assistance Program to assist other countries?

What are some of the Bureau's anticrime successes?

Does the State Department operate any other assistance programs which would directly assist communities and local law enforcement in other countries to fight gangs, drugs, and crime?

When a country such as Denmark requests help from the United States to combat gang violence, what are your thoughts on providing technical assistance to developed countries?

Would you advocate an expansion of programs operated by the State Department which would assist other countries fight gang violence, crime, and drugs?

*Answer.* The State Department's Bureau for International Narcotics and Law Enforcement Affairs (INL) has traditionally had a training and technical assistance program to combat narcotics trafficking and production in Latin America, Asia, the Caribbean, and Africa. This assistance has been delivered bilaterally and through international organizations. In addition, the Department has expanded the scope of its training and technical assistance programs to meet emerging threats in Central Europe and the Newly Independent States.

In Africa, INL is providing a two-week condensed International Law Enforcement Academy (ILEA) seminar on organized crime, financial fraud and drug trafficking to both French and English speaking countries. We are also funding anti-narcotics training by the U.S. Customs service and DEA for a number of countries in this region.

In the Caribbean, in addition to its drug efforts, INL along with U.S. federal, state and local law enforcement agencies will provide training on combatting gang violence, and witness and judicial protection.

In Asia, INL is working with U.S. federal law enforcement agencies and providing training in the areas of forensic science, hostage negotiations, and financial crimes. We are also funding anti-narcotics training by the U.S. Coast Guard, U.S. Customs Service and DEA in the region, in addition to funding a heroin reduction program through the United Nations Drug Control Program (UNDCP).

In Latin America, INL is providing training to combat firearms and drug trafficking, organized crime, and financial fraud.

One of INL's anti-crime successes was the prosecution and conviction of a major Russian organized crime figure in New York City, which was a direct result of having the Russian police work side-by-side with U.S. federal law enforcement during the investigation of the case. The Russian police were able to provide invaluable insight into the suspects and their criminal enterprises.

The INL Training and Technical Assistance Program is the only assistance program operated by the State Department that directly assists foreign communities and foreign law enforcement in their efforts to combat gangs, drugs and crime.

When a developed country, such as Denmark, requests assistance, we provide both policy and operational guidance. This allows the requesting country the ability to view issues in a much broader range than just that of operational concerns. As a rule, we do not fund training programs for developed countries, although we do permit the inclusion of their officials in existing training programs on a reimbursable and space available basis, where appropriate.

Within overall budgetary and program constraints, we believe there are excellent opportunities for expanding these successful programs. We hope to be able to provide increased assistance to other regions as noted above. This expanded effort would help to combat and disrupt transnational crime on a larger global scale, as

noted in the President's remarks during his address in 1995 to the United National General Assembly.

#### COORDINATION OF CRIME PROGRAMS

*Question.* There are a number of anti-crime programs operated by various bureaus and agencies in the State Department, the Justice Department and the Treasury Department.

For example:

- The State Department's Bureau of International Narcotics and Law Enforcement targets drug production and trafficking, as well as international crimes.
- State's Bureau of Latin American Affairs funds the International Criminal Investigative Training Assistance Program (ICITAP) which is operated by the Justice Department and trains police in Central America and Bosnia.
- AID funds the Administration of Justice Program which supports courts and prosecutors in developing countries.
- The Justice Department has an Executive Office of National Security in the Deputy Attorney General's Office, an Office of International Affairs in the Criminal Division, and an international clearinghouse of justice information operated by the Department's Office of Justice Programs.
- Other Justice Department agencies, including the FBI and DEA are actively involved in international crimes and drug trafficking.
- And, the Treasury Department's Financial Crimes Enforcement Network (FINCEN) works with international organizations to target money laundering and other complex financial crimes.

How do you ensure full coordination between the State Department and other federal agencies which also support various international crime programs?

Is there an inter-agency working group which would ensure coordination of international crime programs? If so, which federal agencies are represented, at what level, and how often does the group meet?

*Answer.* In an effort to improve full coordination between the State Department and other federal agencies which also support international crime programs, the Department's Bureau of International Narcotics and Law Enforcement Affairs (INL) chairs a monthly inter-agency Law Enforcement Working Group (IWG). The group jointly develops programs and priorities for the responsible use of INL, Freedom Support Act (FSA) and Support to East European Democracy (SEED) funds for anti-crime training and technical assistance programs.

The law enforcement agencies of the Departments of Justice, Treasury and State participating in these meetings include: Drug Enforcement Administration, Federal Bureau of Investigation, Immigration and Naturalization Service, International Criminal Investigative Training Assistance Program, Department of Justice's Office of Professional Development, Internal Revenue Service, Bureau of Alcohol, Tobacco and Firearms, Customs, Secret Service, Financial Crimes Enforcement Network, the Federal Law Enforcement Training Center, and the Diplomatic Security Service. Representatives are usually international training division chiefs and representatives of operational units in each agency, as appropriate. Other participants include: Office of Management and Budget, the Office of the Comptroller of the Currency, the Federal Reserve, the State Department's assistance coordinators for Central Europe and the New Independent States, and a representative of the U.S. Intelligence Community.

The Department (INL) also prepares a cable for our embassies which provides information from the meetings on matters of general interest. These reports may be used to assist in decisions made by the embassy's country team, which includes representatives of the law enforcement community.

#### MIDDLE EAST PEACE PROCESS

*Question.* In signing the Hebron agreement with the Palestinians, Israel's Prime Minister, Benjamin Netanyahu, has demonstrated Israel's continuing commitment to the peace process and the willingness to take risks for peace. Yet the toughest issues in the peace process now will be addressed in the negotiations, making it more important than ever that the U.S. stand by its friend and ally Israel.

What are your plans to provide assistance to those countries directly involved in the peace process? What specific support will be provided to Israel?

Given the helpful role that Jordan has played in advancing the Middle East peace process, what are your plans to provide sufficient support to Jordan?

*Answer.* The U.S. continues to provide substantial bilateral assistance to those countries directly involved in the peace process. Assistance to Israel and Egypt account for a substantial portion of U.S. bilateral economic and military aid. In the

Administration's fiscal year 1998 budget request, we have once again requested traditional assistance levels for Egypt and Israel. For Israel, this includes \$1.2 billion in Economic Support Funds and \$1.8 billion in Foreign Military Financing. In addition, approximately \$80 million is provided to the United Israel Appeal to support refugee relocation assistance to Israel. Israel is the beneficiary of numerous cooperative programs with the U.S. Department of Defense (and has earned the designation of Major Non-NATO Ally), as well as cooperation in the field of counterterrorism. In addition, Israel benefits from numerous regional programs, including those in the critical areas water resource and environmental management, that are outgrowths of the Middle East peace process. It is the desire and expectation of the Administration that these programs will continue.

The U.S. is committed to supporting King Hussein's difficult political decisions on behalf of peace and his government's efforts to maintain stability and promote Jordan's long-term economic viability. The President's fiscal year 1998 budget request asks for an increase in Economic Support Funds for Jordan. In addition, Jordan benefits from military training under the International Military Education and Training (IMET) program, a Foreign Military Financing program (currently supporting delivery and maintenance of a squadron of F-16's), recent designation as a Major Non-NATO ally, a program of debt relief, demining assistance, and from several key regional programs in the areas of water resource and environmental management associated with the multilateral track of the Middle East peace process. In addition, we recently signed an "Open Skies" air transport agreement and reached agreement on a Bilateral Investment Treaty. We are always looking for creative ways to support Jordan as it transitions to an open economy and continues to support the peace process. The President has made clear we are committed to being responsive to Jordanian requests and we are always looking for ways to do so.

#### TERRORISM

*Question.* International terrorism at both home and abroad continues to be a matter of great concern. The United States has provided strategic and monetary assistance to her allies to help fight terrorism. For example, Congress has appropriated \$100 million for anti-terrorism assistance to Israel.

How have these funds been allocated?

*Answer.* The President requested and Congress appropriated \$50 million for Phase I of the counterterrorism equipment assistance package for Israel in fiscal year 1996. These funds are being used by mutual agreement for Israel to acquire a variety of screening systems for use at checkpoints to inspect bags, goods, pallets and containers; for equipment to neutralize and dispose of explosive devices; for equipment to enhance forensic investigative capabilities of the Israeli police; and for equipment to upgrade Israeli police surveillance and operational capabilities.

The President requested and Congress appropriated a second tranche of \$50 million for Phase II of the counterterrorism equipment assistance program for Israel in fiscal year 1997. We have recently concluded intensive discussions with Israeli authorities and have agreed that these Phase II funds will be used to fill in the remaining gaps of screening systems for detecting explosives; for equipment to establish a border control and personnel monitoring system; for the purchase, testing and enhancement of surveillance and detection equipment; and for additional equipment to enhance the investigative, forensic science, and operational capabilities of the Israeli police forces.

*Question.* Have these funds been effective in combatting terrorism? Could a similar program be applied to other countries which face comparable threats?

*Answer.* The equipment Israel is acquiring under the equipment assistance program will substantially upgrade its counterterrorism capabilities, especially when the entire equipment package is completely installed and operating. Even now, with only that limited portion of the program that has been completed, we have seen a major improvement in Israel's ability to speed up the movement of people and goods from Palestinian areas in Gaza to and through Israel. This in turn enhances the economies of both Israelis and Palestinians and reinforces the positive lessons learned from security cooperation.

However, as demonstrated by the Palestinian March 21 suicide bombing at a Tel Aviv cafe by a terrorist from the West Bank, there is simply no fool-proof equipment or security system that can stop determined terrorists all of the time.

In the long term, we believe the program will play a major part in upgrading Israeli security capabilities. Moreover, some of the equipment can play an important role in providing the security assurances both Israelis and Palestinians require. Although we are still in the early stages of this effort, it may provide experience in border control security systems that could be relevant elsewhere.

*Question.* In what other ways could the United States effectively work to combat terrorism. What more should the U.S. do in the future?

Answer. There is no one certain solution to the problem of terrorism. Basic elements of our policy include: no concessions to terrorists; aggressive pursuit of terrorists; using the combined assets of law enforcement, diplomacy, and intelligence; and using economic and diplomatic sanctions against designated state sponsors, while urging other nations to do likewise.

We also use a variety of specialized tools and measures, such as training, counterterrorism research and development, improving intelligence collection, analysis and sharing, and enforcement of political and economic measures against state supporters of terrorism, and hampering terrorists' fundraising.

Specific programs, for example, include State's Antiterrorism Assistance (ATA) Program which has trained over 18,000 foreign officials from 90 countries in CT techniques and aviation security. We need to keep working on training as the threats continue to evolve. We also need to sustain our productive interagency research and development program to make use of modern technology to detect and counter terrorist attacks, explosives and other lethal substances.

We also work with other governments in multilateral counterterrorism initiatives. For example, working with friends and allies in the Group of Eight, we are participating in negotiations in the U.N. Sixth Committee on a new Terrorist Bombing Convention. We are also working to develop better ways to counter terrorism against land transportation, such as buses and trains and to investigate attacks through improved information sharing and data bases. And, of course, we share information and work with the Justice Department and FBI, the lead agencies for dealing with terrorism attacks in the United States and investigating terrorist attacks against Americans overseas.

In order for these and other specific counterterrorism efforts to succeed, and to maintain relations with other governments that are needed for effective cooperation, we also need sustained resources adequate to support overall U.S. leadership and diplomacy abroad.

#### ILLEGAL IMMIGRATION

*Question.* The waves of illegal immigration continue to take their toll on the resources of inland states, such as Colorado and Utah. As these states grapple with the problems associated with illegal immigration, the countries of origin seem to do little to stem the tide. It also seems that if the origin countries, such as Mexico, had better economies, they could provide employment for their citizens and reduce or eliminate a major reason for their leaving.

What are your plans to leverage these countries of origin to do more in controlling illegal immigration?

Answer. While many migrants depart their country for economic reasons, some are driven from their homelands by natural disasters, political turmoil and wars. Whatever the reason, the United States alone cannot stem this illegal movement of migrants across international boundaries. In response to President Clinton's directives to deter alien smuggling, the Department has been engaged for some time with both sending and transit countries. We have been working with these countries to pass laws which would criminalize alien smuggling. Two countries in Central America, Nicaragua and Panama, have passed laws against alien smuggling as a result of our efforts. Other countries within the region are using a model legislative package we have created, to introduce similar laws. We will continue to work with these and other countries to criminalize alien smuggling.

The U.S. is actively engaged with countries throughout the hemisphere in bilateral and multilateral discussions to address migration and migrant trafficking. In March, Assistant Secretary Phyllis Oakley and INS Commissioner Doris Meissner led a delegation to the Second Regional Migration Conference held in Panama. The conference was attended by vice ministers from every government in Central and North America. This forum assists in coordinating migration policy, procedures, law enforcement approaches and training opportunities.

Alien smuggling is facilitated by official corruption. Poorly trained and paid immigration inspectors and border guards are easily bribed to assist smuggled aliens. In an effort to instill a sense of professionalism, the Department, in concert with the Department of Justice, has funded training programs for these officers. The Department has cancelled visas of officials known to be involved in alien smuggling and made their trafficking activities known to the public.

Information is a key element to combatting alien smuggling. The Department has worked with cooperative transit and sending countries in an effort to improve the

flow of information regarding frequently used alien smuggling travel routes, known smugglers and fraudulent documents vendors.

These initiatives are not exhaustive but representative of the Department's efforts to combat alien smuggling within source and transit countries.

#### MICROCREDIT

*Question.* What are your thoughts on microcredit generally? What plans does the State Department have to expand the microcredit program?

Answer. Microcredit programs can help low-income people become economically self-reliant through market-driven, productive activities. Credit supports entrepreneurs and encourages microenterprises and small businesses to grow.

Women will benefit particularly from microcredit programs. In Latin America, for example, women-owned businesses are one of the fastest growing segments of the microenterprise sector.

Economic reform measures such as the lifting of interest rate caps and deregulation of the banking sector are key to the success of microcredit programs. We are urging the governments of developing countries to move ahead on economic reform.

USAID has an active microenterprise initiative, developed in close consultation with Congress, which provides training and technical assistance to banks and borrowers, and capital for non-banking institutions providing microcredit. This program provides more than \$120 million annually and has just been extended for two more years.

We are encouraging multilateral development institutions, such as the World Bank, to expand funds and programs available to support microenterprise and small business.

Support for microenterprises was an initiative of the 1994 Miami Summit of the Americas. We will be reviewing the progress on this initiative as we prepare for the next Summit of the Americas to be held in Santiago, Chile in 1998.

#### BULGARIA

*Question.* What action is the State Department taking to provide assistance to Bulgaria? What additional steps does the Department plan to take in the future?

Answer. Through the Support for East European Democracy (SEED) program, we have allocated \$2.5 million to provide humanitarian assistance to Bulgaria consisting of \$2.1 million in pharmaceutical supplies and \$400,000 in response to an appeal from the International Red Cross. We have also offered Bulgaria \$25 million in agricultural credit guarantees to help them import vital foodstuffs. We presently are exploring the possibility of providing additional food aid through the Food for Peace program.

#### CURRENT POSITION ON THE PROPOSED 621 PROVISION

*Question.* Last year, the Administration opposed the provision included in the Senate version of the Commerce, Justice, and State Appropriations Bill related to the importation of "curios and relics". (Section 621) Does the State Department still have concerns outlined in this position paper?

Answer. The Department continues to have the same concerns regarding proposed legislation modifying Section 38 of the Arms Export Control Act (AECA) and thus restricting the President's authority to control the importation of defense articles and services, including curio and relic firearms, into the United States.

- Currently, the AECA generally prohibits the return for private sale of any U.S. origin defense items furnished under the AECA or any foreign assistance or sales programs. Although there's an exemption permitting consideration of imports of curio and relics, for important policy concerns, end-use and retransfer controls and other legal concerns, the State Department generally advises that import-licenses be denied. The legislation originally proposed would have precluded such considerations and the Department believes such a review is more appropriate than a legislative mandate to approve all such requests.
- Furthermore, in most cases, these firearms, now designated curios and relics, were originally provided to foreign governments by the United States for their national defense, usually free-of-charge. In most of these cases, the USG is allowed to receive the net proceeds of any sales made by foreign governments of defense articles provided on a grant basis by the U.S. An enactment that would permit the importation of all curios and relics would restrict the USG from requiring foreign governments to return such proceeds and certain foreign governments, rather than U.S. taxpayers, would reap a windfall from such sales.
- Approval for all curios and relic importation would also require the Department to approve the importation of curio and relics from proscribed countries. As indi-

cated in the September position paper, Vietnam holds a significant quantity of U.S. origin M-1 firearms, but is considered a proscribed country and prohibited from exporting military items to the United States under the International Traffic in Arms Regulation.

We continue to believe that such a measure would limit the Department of State's ability to provide advice relating to foreign policy and national security considerations related to such transfers.

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#### QUESTIONS SUBMITTED BY SENATOR ERNEST F. HOLLINGS

##### ICASS REFORM

*Question.* Dick Moose, Pat Kennedy and Rich Greene have worked for years to develop a system so that overseas administrative costs are more fairly and accurately distributed. It is called ICASS—International Cooperative Administrative Services.

It is not reflected in the President's budget in State, Commerce, Justice or any other agency. Why? When are we going to receive a budget amendment?

ICASS does not distribute telecommunications and facilities costs. Why don't we distribute those costs too?

*Answer.* When the President's budget was released on February 6, we had not yet finalized the ICASS budget estimates. This task is now complete. I am pleased to report that on March 17, President Clinton transmitted to Congress an fiscal year 1998 budget amendment that will provide the legislative authority to make a one-time transfer of \$113 million from the Department of State to the 23 other United States Government agencies and departments operating abroad in order to implement the ICASS system.

We consider ICASS a work in progress. The fiscal year 1998 ICASS budget amendment includes such items that are now currently being fully funded by State as building operating expenses, non-residential local guard costs, and posts' community liaison offices. For fiscal year 1998, these were the only additions to the pool of shared administrative expenses that the participating agencies would agree to include in ICASS. In future years, however, the Department would like the participating agencies to consider adding such items as non-Diplomatic Telecommunications Service (DTS) communications expenses (e.g., the distribution of classified and non-classified cable traffic at posts) and Diplomatic Security costs. DTS costs are already distributed through a separate cost sharing program. With respect to our overseas facilities, the Department made a conscious decision to initially exclude long-term leased and government owned properties from the pool of shared ICASS costs due to the magnitude of the value of these capital investments and the complexity of managing these facilities.

##### CAPITAL IMPROVEMENT FUNDING

*Question.* Your budget includes no funding for new capital construction. Instead it states that the Department of State will rely on real property sales for Embassy construction and renovation. In fiscal year 1998, it is estimated that the State Department will yield \$137 million from such sales.

Are such estimates realistic?

For which embassy projects are you proposing to use these funds?

*Answer.* The Security and Maintenance of U.S. Missions Fiscal Year 1998 Budget document cited two sales figures: \$180 million for fiscal year 1997 and \$137 million for fiscal year 1998. Both of these are based on the total dollar amounts to be realized if all properties projected for possible sale in those years are in fact sold and if sales take place at or near estimated values.

In fiscal year 1997 to date, 15 sales have been completed from which approximately \$38 million in sale proceeds will be realized. In addition, offers have been accepted for another 19 properties, but sales have yet to be completed. The dollar value of these latter transactions is approximately \$69 million.

The ability to realize the full \$180 million in fiscal year 1997 and \$137 million in fiscal year 1998 is dependent on multiple factors, many of which are beyond the Department's control. Changes in local real estate market conditions, delayed receipt of host government approval for sale and/or USG tax exempt status, unexpected financial difficulties encountered by purchasers, political upheavals and/or catastrophic events, and unanticipated legal issues requiring resolution, frequently intervene and disrupt sale timeliness.

The Department intends to use fiscal year 1997 proceeds of sale for residential housing acquisition to buy down the lease hold account, and acquire new office and other diplomatic facilities. We plan to use proceeds from the sale of properties in

Germany to help finance the new embassy office building in Berlin; proceeds from Bangkok to finance needed construction in Bangkok and also construction and acquisitions in China; and the proceeds from Beirut to construct new facilities in Luanda, Kampala, and Abidjan.

Not all of the requirements in the above posts can be financed with proceeds of sales. A further concern is that some of these scarce funds may have to be used for other high priority, unbudgeted needs elsewhere (e.g., Bridgetown, Capetown, Doha, Dubai, Dushanbe, Istanbul, Kingston, Rabat, Seoul, Tashkent, Tunis, and posts in Nigeria and Pakistan).

#### CAPITAL IMPROVEMENT FUNDING—GERMANY

*Question.* What is the situation in Germany? As I understand it, the plan since the early 1990's is to sell property in Bonn to build a new Embassy in Berlin. Is that plan on schedule? Will our Berlin Embassy be "self-financing?"

*Answer.* We plan to relocate the American Embassy to Berlin in the summer of 1999.

The staff will continue to utilize two existing buildings for office space until the new embassy is built. One building is the former chancery of the American Embassy to East Germany, and the second is located at Clayallee, site of the former U.S. Mission to Berlin. Renovation of these facilities (security, fire/life safety, and make ready work) in preparation for the relocation will be completed by the summer of 1998 and cost approximately \$6 million.

Through negotiations with the German government, the Department has acquired housing units in Berlin in exchange for housing units in Bonn. The Department is evaluating the condition of these properties to determine necessary renovations. Because of possible high renovation costs, the Department is exploring alternatives, including disposal of some current housing to finance construction and/or the acquisition of more cost effective housing.

Because appropriations are not available, the Department will use asset management to finance to the extent possible, the construction of new facilities, i.e. from the proceeds of sale of various properties in Germany, which will become excess when the Embassy relocates to Berlin.

Short term plans call for the sale of six properties. The Department has received approximately \$12.5 million from the sale of properties in Duesseldorf and Stuttgart, and anticipates proceeds of \$4 million from the sale of properties in Hamburg.

We anticipate the majority of required funds for construction of the new chancery to come from proceeds generated from the sales of the Berlin Radio In Allied Sector (RIAS) Site and Bonn Plittersdorf Housing Compound. The Plittersdorf housing properties cannot be made completely available to a purchaser until the Bonn properties are closed in the summer of 1999.

An Architectural and Engineering firm has been selected to design the new chancery building. As soon as sufficient funds from the sale of assets in Germany are available, the Department will proceed with the design. Design is expected to be completed in 15 months once the notice to proceed is given.

#### NEW POST IN VIETNAM

*Question.* I've understood that for some time the Department has planned to open a new consulate in Saigon, or Ho Chi Minh City as it is now called. Apparently that is where the business opportunities are for U.S. industry and it is where there is an extremely high consular workload. It would be the third most active consular post in Asia. Where does the Department stand on opening this post? When are we going to see this proposal? How big a consulate do you contemplate?

*Answer.* I agree with your assessment. A consulate in Ho Chi Minh City would be very important in addressing a very large consular workload and in advancing our commercial and other interests in southern Vietnam. It would also allow us to monitor more closely human rights and social conditions in Vietnam. Accordingly, the Department has conducted consultations with Congressional committee staff on its plan to open a post in Ho Chi Minh City. The Department is now considering whether to submit a formal reprogramming notification that, if approved, would permit an opening of this post in the current fiscal year.

Our most conservative estimates are that the consulate will process roughly 16,000 to 20,000 immigrant visa applications and 75,000 non-immigrant visa applications per year. The new post will also provide citizen services for nearly 3,000 resident Americans and roughly 75,000 American citizen visitors per annum. The Department's plan, if approved by the Congress, would be to assign eighteen direct-hire American employees to Ho Chi Minh City, not including temporary positions

required for oversight of any facilities construction/renovation projects. Among these employees would be eight consular officers.

Three other USG agencies have expressed interest in being represented at the post: the Department of Commerce (Commercial Service), the U.S. Information Agency and the U.S. Immigration and Naturalization Service.

#### FEES

*Question.* In the name of "government reform" it looks like Franklin Raines at OMB has really screwed up the State Department's budget.

As I understand the budget proposal, \$140 million in visa fees now collected and retained by the Department would now go "on budget" and be scored by CBO. So this Subcommittee would have to add \$140 million to the State Department appropriation 4 and take up room in our allocation 4 just to provide the funds you now have for free.

How does that provide an incentive? It seems to me that OMB may feel good about this proposal that is theoretically sound, but in the real world the State Department loses.

*Answer.* There are several good reasons for implementing the fee proposal. It is good government to establish a closer link between the fees charged to service users and the financing of the Government operations that provide the service. The fee proposal will give the Department greater flexibility to meet mandatory passport and visa issuance workload. As workload increases, the Department's revenue will increase to match the rising cost of providing increased services. The fee proposal allows the Department to adequately budget for inflation and investment in the future. The fee funded portion of the Department's diplomatic and consular functions will be insulated from the impact of world-wide inflation. The Department can invest in the tools required to provide more effective service and the Department can better ensure that our core diplomatic functions are adequately funded.

In addition to specific authorization and appropriation language, the Administration is proposing a change to the scoring rules under the Budget Enforcement Act (BEA) of 1990 to make this proposal work. This scoring change will address the concerns raised concerning the impact of this proposal on Congressional Budget Office scoring and budget subcommittee allocations. If the Administration and Congress work together to put these legislative pieces in place, we can make the transition to greater application of user fees to provide more efficient and effective Department services at less cost to the general taxpayer.

#### FUNCTION 150 PRIORITIES

*Question.* Why is the Administration so committed to putting a priority on giving money to others rather than supporting our own men and women? Does this reflect your priorities, or is this OMB again?

*Answer.* The President's fiscal year 1998 International Affairs budget request of \$19.45 billion seeks to sustain and support America's leadership. I urge you to support full funding for this request. American leadership is the cornerstone of efforts around the world to advance American prosperity; ensure the emergence and maintenance of free markets and democracy; confront the problems of environmental degradation, runaway population growth, and endemic poverty; achieve regional peace and stability; and help others cope with humanitarian crises. The request reflects the fact that these objectives cannot be achieved without strong and proactive diplomacy.

The Foreign Operations component of the President's request seeks increased funding to support transition to democracy and free markets in the New Independent States, including the Partnership for Freedom trade, investment, and anti-crime initiative. The Administration is also requesting additional funding to combat narcotics and deal with unanticipated crises by drawing on Economic Support Funds and funds for voluntary Peacekeeping Operations. The request also includes a down payment on U.S. arrears to the Multilateral Development Banks. All of these activities advance American interests.

I appreciate your continued support of sufficient funding for State Department Operations. Maintaining America's strength requires world-class diplomacy. Given broad, bipartisan support for reducing the Federal deficit, this request increases funding for Department of State operations by a modest four percent. This increase would cover inflation and provide the funding the Department must make to modernize information technology and reverse the deterioration of infrastructure overseas.

## DUPLICATION BETWEEN STATE AND FCS

*Question.* Our House Chairman, Hal Rogers, believes that State's economic officers often duplicate the function served by our Foreign Commercial Service Officers overseas. It has always seemed to me that they are different types of people doing different missions. FCS officers often have background in the private sector and hustle to help American businesses get market access and contracts. State Economic Officers are more traditional Foreign Service officers who negotiate trade agreements with foreign ministries and who provide economic reporting. What is your position on this issue Madam Secretary?

*Answer.* I agree with your assessment. We need both Foreign Commercial Service Officers and State Economic Officers working together overseas, because they have different responsibilities and skills.

State Economic Officers seek to influence foreign government's legal and policy environment on economic issues affecting the United States and promote policy reforms to provide a more predictable environment for U.S. business. Commercial officers promote exports by helping individual U.S. firms take advantage of the existing business environment. In major markets we need both to push governments to level the playing field and to help U.S. companies challenge the competition. In small markets the State Department Economic Officers do both jobs.

We know the House Subcommittee is concerned about overlap. To the extent that there is any overlap, there is always room for improved coordination. I will look to Stu Eizenstat, when he becomes Under Secretary for Economic, Business and Agricultural Affairs at the State Department, to continue the progress made by former Under Secretary Spero at dealing with concerns raised by the House Subcommittee regarding an effective division of labor between State and Commerce officers overseas.

## INTERNATIONAL ORGANIZATIONS SUPPLEMENTAL

*Question.* If we give the U.N. the \$658 million you have requested for peacekeeping arrearages, how do we know we won't be right back again in another year or two?

*Answer.* Effective in fiscal year 1996, the Administration began notifying Congress of its intention to vote for a new or expanded United Nations peacekeeping operation 15 days in advance of the Security Council vote, and providing a notice of reprogramming of existing appropriated funds.

In addition, the critical, examinations which the Administration undertake of existing peacekeeping operations is reflected in a generally downsized level of peacekeeping operations at the U.N. in recent years.

*Question.* Isn't most of the arrearage request for money Britain and France say we owe them for Bosnia?

*Answer.* The attached table shows the operations and amounts for which we have requested funding to pay arrearages. The UNPROFOR operation is the largest single line item. However, we do not have information from the U.N. as to how payments from the United States might be spent, such as which countries could expect to receive reimbursement for their participation in assessed peacekeeping operations and which countries would not be reimbursed.

*Fiscal year 1997 arrears to U.N. peacekeeping operations*

[Dollars in thousands]

<i>U.N. Force / Region</i>	<i>Arrears</i>
UNIKOM—Iraq/Kuwait .....	\$2,539
MINURSO—Sahara .....	30,016
UNPROFOR—Yugoslavia .....	533,306
UNOSOM II—Somalia .....	94,004
UNAMIR—Rwanda .....	4,498
UNOMIL—Liberia .....	268
UNIFIL—Liberia .....	15,715
UNAVEM—Angola .....	22,276
UNFICYP—Cyprus .....	3,029
UNOMIG—Georgia .....	2,364
<b>Total .....</b>	<b>708,015</b>
Fiscal year 1997 funds available to pay arrears <sup>1</sup> .....	50,000
Outstanding after payment .....	658,015

<sup>1</sup> Payment to be made upon required certification.

## NATO EXPANSION

*Question.* In 1956, I remember when the Hungarians rebelled and the Russians invaded. They believed Secretary Dulles and our radio broadcasts, but we did not come to their aid.

Now you are proposing to bring Poland, the Czech Republic, Slovakia, and Hungary into NATO.

Does this mean that you are now making a treaty commitment that the U.S. is obligated to go to war to defend these countries? That is what you are saying, isn't it?

*Answer.* Article 5 of the North Atlantic Treaty provides that, in the event of an armed attack against a member of NATO, each other member "in exercise of the right of individual or collective self-defense recognized by Article 51 of the Charter of the United Nations, will assist the Party or Parties so attacked by taking forthwith individually and in concert with the other Parties, such action as it deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area."

The Treaty protects our right to act in accordance with our national interests and the provisions of our Constitution. We do, however, consider it a commitment to come to the assistance of any NATO member who is the victim of outside aggression. Whichever new countries are admitted to NATO (and that decision has not yet been made) will bear the same responsibilities and share the same rights and privileges as the existing members.

NATO's essential purpose to safeguard the freedom and security of its members and to work for the establishment of a just and lasting peaceful order in Europe has not changed and will not change with the admission of new members. NATO's principle of collective defense has served as an effective deterrent to armed aggression against its members for almost 50 years. Enlarging NATO will further our efforts to strengthen stability and security in Europe.

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 QUESTION SUBMITTED BY SENATOR BARBARA A. MIKULSKI

## OUTDATED TECHNOLOGY

*Question.* How can our diplomats represent our interests with rotary phones and outdated computers?

*Answer.* The Department of State is engaged in a long-term effort to modernize its information technology to successfully support the conduct of foreign affairs. To this end, the Department has focused on three areas in its modernization efforts:

- The application of management improvement strategies for all information technology projects, including appropriate decision making processes, project management methodologies, capital planning and performance measures practices;
- A coordinated planning approach including a Strategic Plan that lays out a five-year program that will resolve critical problems with our obsolete technology infrastructure. In addition, we are implementing a Tactical Plan, to be followed over the next two years to achieve the goals set out in the Strategic Plan. Simply put, the Strategic Plan states what must be done and the tactical plan lays out in two-year increments, how we will do it;
- Through targeted investments, we have directed limited IRM funding to the Department's high priorities: replacing obsolete equipment (desktop PC's, overseas radios and telephones); extending electronic mail world-wide; and upgrading our mainframe computer capabilities. We have made strides in reducing the number of obsolete units in unclassified systems overseas, classified systems overseas, telephones, unclassified e-mail, and computer mainframes.

Our next step is to continue investing in information technology upgrades and improvements. The additional \$80 million we plan to invest in fiscal year 1998 (above our base) will be used for:

- Infrastructure upgrades.*—We will continue to work toward eliminating our underlying antiquated infrastructure so that we can provide business quality information systems and services. Overseas, posts will have modern desktop, computer, and communications equipment and higher speed communications circuits. Our headquarters infrastructure will be upgraded as well to accommodate requirements from overseas.
- Applications.*—We are preparing for the Year 2000 and will continue to develop new and replacement systems supporting major business requirements such as border security, financial management, personnel, public access, medical records, logistics, electronic commerce and real property. We will also replace

our existing electronic mail systems with a better designed and integrated system, based on industry standards.

—*Training.*—We will develop a training strategy and employ innovative tools such as distance learning. Our new School of Applied Information Technology must map training to the new generation of equipment being installed and the replacement business systems that will soon be in use at all department sites worldwide.

SUBCOMMITTEE RECESS

Senator GREGG. If there is nothing further, the subcommittee is recessed.

[Whereupon, at 3:32 p.m., Thursday, March 6, the subcommittee was recessed, to reconvene subject to the call of the Chair.]

**DEPARTMENTS OF COMMERCE, JUSTICE, AND  
STATE, THE JUDICIARY, AND RELATED  
AGENCIES APPROPRIATIONS FOR FISCAL  
YEAR 1998**

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**TUESDAY, MARCH 11, 1997**

U.S. SENATE,  
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,  
*Washington, DC.*

The subcommittee met at 1:55 p.m., in room S-146, the Capitol,  
Hon. Judd Gregg (chairman) presiding.  
Present: Senator Gregg.

**SMALL BUSINESS ADMINISTRATION**

**STATEMENT OF AIDA ALVAREZ, ADMINISTRATOR  
ACCOMPANIED BY GREG WALTER, DEPUTY CHIEF FINANCIAL OFFI-  
CER**

**PREPARED STATEMENT**

Senator GREGG. You are here and I am here, so let us get started.

Ms. ALVAREZ. OK.

Senator GREGG. I expect from our notes that we may not have a full complement anyway. Hopefully, other Senators will join us.

This is a fairly informal exercise on this side of the Capitol. We welcome you to the committee. It is a pleasure to have you here. Why do you not give us your thoughts on your budget?

Ms. ALVAREZ. I hope you do not mind if I have some prepared notes here. I want to thank you for the opportunity to appear here to discuss with you, Mr. Chairman and members of the committee, the President's fiscal year 1998 budget request for the U.S. Small Business Administration. After my brief remarks, I, of course, hope to respond to questions and I request that you enter my written statement into the record.

Senator GREGG. That will be done.

[The statement follows:]

**PREPARED STATEMENT OF AIDA ALVAREZ**

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to appear before you today to discuss the President's fiscal year 1998 Budget request for the U.S. Small Business Administration (SBA).

It has now been a little over three weeks since I was privileged to take the oath of office as Administrator of the SBA. I have met some terrific people who have been doing a great job for America's small business owners. I am excited at the prospect

of leading this Agency forward and believe we can make the SBA even more efficient, more effective, and of broader help to America's small businesses.

As I said at my confirmation hearing on February 12, I want SBA to be on the leading edge in financial management, a disciplined, sophisticated institution that keeps its eye on its larger mission. I will seek partnering opportunities that leverage our resources and will apply business-like methods and economies. I also hope to be a strong advocate for small business. I know that we cannot accomplish our objectives without adequate resources and strong cooperation with the Congress. A review of the President's budget request is an appropriate place to begin our joint effort to chart a course for the SBA. And so I welcome this opportunity to discuss it with you.

The President's request reflects his continued strong support for small business and his confidence in the SBA's ability to perform its mission. It is also consistent with his overall objective to reach a balanced budget by the year 2002. We appreciate the President's support and understand his insistence that we work smarter, with greater use of new technology, and more innovative approaches to program delivery. Our programs at the SBA are already helping millions of small business owners. With new resources, we will be able to do even more.

President Clinton has established five priorities for the SBA which provide the context for our long-standing programs as well as new initiatives. Those priorities are to: Improve access to capital for small business owners; reduce burdensome regulations and unnecessary paperwork requirements that inhibit the growth of small businesses; make the SBA more effective, efficient and focused on customer needs; support small business education, counseling and training; and be a voice for America's small businesses.

#### SMALL BUSINESS IN THE U.S. ECONOMY

As we discuss the budget request for SBA, it is important to keep in mind how critical small business is to the U.S. economy:

- The number of small businesses is growing at a record pace, with over 825,000 new firms created in 1996—a 55 percent increase in the total number of new small businesses since 1982.
- Small businesses employ more than 50 percent of the American work force and generate more than 50 percent of the gross domestic product (GDP).
- Small businesses are our country's leading source of innovation. Studies show that small firms innovate at twice the rate of large firms.
- Small firms also bring more members of society into the economic mainstream. New women-owned firms (one-third of all firms) have grown at twice the rate of men-owned businesses for a decade. From 1987 to 1992, businesses owned by African-Americans grew at twice the rate of all firms, and Hispanic-owned firms grew over three times to the rate of all firms.
- Small businesses are the key to a successful national export strategy. Ninety-six percent of all exporting companies are small or medium-sized with fewer than 500 employees, according to the latest Commerce Department data.
- Small business is healthier today, with failures and bankruptcies declining every year since 1993.

#### RECENT ACCOMPLISHMENTS

SBA has played a key role in the growth of small business over the last four years by nearly doubling its loan volume, providing record amounts of private capital investment, and ensuring that millions of small business owners receive the counseling and training they need to succeed. With an increased emphasis on building successful public-private partnerships, the SBA is clearly a leader in the Administration's efforts to reinvent government and "do more with less". In fact, while SBA's current business portfolio is more than \$35 billion, the Agency's entire fiscal year 1998 budget is less than the taxes paid in one year by just one company that received critical SBA financing when it was quite small—Intel Corporation.

During fiscal year 1996, SBA achieved many successes in carrying out the President's goals for the Agency. We increased access to capital by guaranteeing more than \$10 billion in small business loans, licensed more new Small Business Investment Companies (SBIC's) than in the previous 20 years combined, reduced the regulatory burden by rewriting all of our regulations in plain English and reducing them by more than half, streamlined Agency operations through the Liquidation Improvement Project (LIP), and improved access to education and counseling by funding nineteen new Women's Business Centers (formerly known as Women's Demonstration Sites) and fifteen U.S. Export Assistance Centers nationwide.

Over the history of the disaster loan program, SBA has helped over 1.3 million disaster victims by providing more than \$24.1 billion in disaster assistance. During 1996 alone, SBA approved nearly 38,000 disaster loans for an amount of almost \$1 billion.

A more complete listing of SBA's fiscal year 1996 achievements are listed in an Appendix attached to this statement.

#### FISCAL YEAR 1998 BUDGET REQUEST

This budget request for the SBA reflects continued support by the Administration to fund the growth in demand for SBA's principal credit and non-credit programs during fiscal year 1998.

For fiscal year 1998, SBA requests \$701.6 million in new budget authority and total staffing of 4,634 Full Time Equivalents (FTE's), which includes 3,047 non-disaster, non-Inspector General (IG) FTE's. This compares to our fiscal year 1997 appropriation of \$852.4 million that funded 4,569 FTE's, including 2,985 non-disaster, non-IG FTE's. The principal reason for the reduction in our appropriation requirement from fiscal year 1997 is the use of unobligated balances to fund the disaster loan program in fiscal year 1998 and lower loan program subsidy costs.

In 1998, SBA proposes to continue to increase its reliance on its private sector partners. Three initiatives will allow SBA to complete its transition from physically servicing and liquidating its \$36 billion loan portfolio to overseeing its private sector partners. First, 7(a) General Business lenders will be required to service and liquidate all loans approved after fiscal year 1997. Second, SBA will sell its \$10 billion portfolio of defaulted guarantees and direct loans beginning in fiscal year 1998, which includes \$9 billion currently outstanding as well as \$1 billion in new direct loans and newly defaulted guarantees. Third, SBA requests \$18 million to improve its portfolio monitoring capabilities. These proposals will allow SBA to focus its limited resources on expanding assistance to small businesses while relying on its private sector partners for "back-end" activities. The budget estimates that these proposals will lead to lower credit, administrative, and subsidy costs.

The budget proposes growth in programs to expand access to capital, assist disadvantaged small businesses, and provide education and training. As part of SBA's goal of stretching taxpayers' dollars, the budget also assumes that (1) Small Business Development Companies will charge counseling fees to substitute for a reduction in federal grants and proposes that (2) disaster loan borrowers pay an interest rate equal to the rate on Treasury securities of comparable maturity.

Some of the more significant aspects of our fiscal year 1998 budget request are:

- Budget authority of \$153 million to provide guaranty authority of \$8.5 billion for the 7(a) General Business Loan Guaranty program;
- For the Section 504 Certified Development Company loan program, no new budget authority is required to provide a program level of \$2.3 billion;
- For the Small Business Investment Company program, \$20.2 million in budget authority to provide program levels of \$376 million of debenture guarantees and \$456 million for participating securities;
- For the Microloan program, no new budget authority for loan-making is required. \$44.1 million in microloans in fiscal year 1998 will be funded through the carryover of unused budget authority from fiscal year 1997. SBA is requesting \$16.5 million for technical assistance to microloan borrowers;
- An additional \$18 million to support enhanced lender monitoring and oversight;
- \$600,000 to support increased International Trade outreach and implementation of the new "SBA Export Express" lending tool;
- No new loan subsidy budget authority is requested for the Disaster Loan program. Expected carryover from fiscal year 1997 will be used to support \$785 million in disaster lending;
- \$57.5 million in federal funding for the Small Business Development Center (SBDC) program;
- \$3.5 million to provide \$1.7 billion in surety bond guarantees;
- An increase in funding for the Minority Enterprise Development (MED) program to restore 7(j) business development assistance to previously-provided levels;
- For the Office of Advocacy, a restoration of a \$1.4 million funding level for data collection and research that is statutorily-mandated;
- In support of women business entrepreneurs, \$4 million to provide technical and business development assistance through the Women's Business Centers;
- To support SBA's Regulatory Ombudsman and the regional Regulatory Fairness Boards, \$500,000; and
- \$10.6 million for the Office of Inspector General.

Now I would like to take you through a more detailed description of our budget:  
*Credit and finance programs*

The SBA expands small business access to capital by providing credit, in partnership with thousands of financial intermediaries, for those small businesses unable to obtain loans through the commercial markets to start up or expand their business. Historically, small firms have faced serious problems obtaining long-term loans in the private credit marketplace because lenders try to avoid mismatches of long-term assets with their mostly short-term liabilities. The SBA, however, has helped to alleviate this problem by providing loan guarantees to participating lenders under a variety of programs.

*7(a) General Business Loan Guarantee Program.*—In its Section 7(a) general business loan guaranty program, SBA guarantees loans made by private sector lenders to small firms for working capital, start-up costs, expansion, and other purposes. For fiscal year 1998, SBA proposes to increase the level of Section 7(a) loans. An appropriation of \$153 million is requested, which will support a program level of \$8.5 billion, up 9 percent from the \$7.8 billion program level in fiscal year 1997.

Reflecting an improvement of the 7(a) loan portfolio and implementation of SBA's Liquidation Improvement Project, the baseline (current services) 7(a) subsidy rate declines from 2.5 percent to 2.32 percent. We propose reducing this rate to 1.80 percent through the following policy initiatives. First, we propose that all new 7(a) loans approved in fiscal year 1998 be serviced and liquidated by the participating lender. In the event of default, lenders will be required to liquidate all non-real estate assets prior to purchase by the SBA, with the real estate liquidated after purchase. Given the time value of money and the reduced purchase of interests, this will lower SBA's default costs—and therefore the fiscal year 1998 subsidy rate—by an additional 26 basis points and \$22.1 million. Currently, nearly 70 percent of new loans are serviced and liquidated by lenders through our LowDoc, Preferred Lender, Certified Lender, and FA\$TRAK programs. This proposal builds on this record of success.

Second, the budget includes \$18 million for portfolio monitoring improvements. This funding will be used to recruit expertise in lender oversight, establish financial performance goals for lenders, create a database for tracking lender and portfolio performance, and develop a management information system to provide timely and accurate information to Agency management. This initiative will lend to lower defaults and increased recoveries, lowering the 7(a) subsidy rate by an additional 26 basis points, which saves \$22.1 billion at our requested \$8.5 billion loan level.

*Certified Development Company (504) Program.*—The Section 504 Certified Development Company (CDC) Loan Program provides long-term, fixed-rate financing to small businesses to acquire real estate, machinery, and equipment for expansion of business or modernizing facilities. Through this program, the Agency promotes economic development and job creation by stimulating the flow of long-term financing to small firms for projects that involve fixed assets or expansion.

SBA requests extension of the Section 504 program fees authorized by the Congress for fiscal year 1997. Using a 15/16 percent pass-through fee authorized by Congress last year, coupled with improved program performance and increased expected recoveries by SBA resulting from the LIP, provides a zero percent subsidy rate, the same rate as in fiscal year 1997. With no new appropriations required, SBA proposes a program level of \$2.3 billion.

*Small Business Investment Company Program.*—The Small Business Investment Company (SBIC) Program is an important source of equity and subordinated debt financing for small businesses. The program provides SBA-backed funds to supplement private capital raised by private sector venture capital companies. These combined funds represent an important source of capital for growing small businesses.

For fiscal year 1998, SBA proposes to increase the level of the SBIC Debentures and Participating Securities programs.

For the SBIC debenture guarantee program, the improvement in the default rate has resulted in a lowering of the subsidy rate from 3.19 percent in fiscal year 1997 to 2.30 percent in fiscal year 1998. Our request of \$8.7 million will support a program level of \$376.2 million, up 25 percent from the \$300 million program level in fiscal year 1997.

For SBIC Participating Securities, due to changes in the discount rate, market premiums and other technical changes, the subsidy rate declined from 3.29 percent in fiscal year 1997 to 2.54 percent in fiscal year 1998. Our request of \$11.6 million will support a program level of \$455.9 million, up 11 percent from the \$410.3 million program level in fiscal year 1997.

*Microloan Program.*—The Microloan Demonstration Program allows SBA to evaluate the effectiveness of using third-party, experienced lenders and technical as-

sistance providers to make smaller loans and provide technical support to small businesses who lack access to even very small amounts of capital. The program's great strength is the technical assistance that accompanies each microloan and is provided by SBA grant funding.

For fiscal year 1998, SBA proposes to increase the level of Microloan credit and technical assistance available to small businesses. For direct loans, SBA proposes to use \$2 million in unobligated funds available in this program from fiscal year 1997 to support a program level of \$19.5 million, at a 10.28 percent subsidy rate. For Microloan guarantees, SBA proposes to use \$2 million in unobligated funds available from fiscal year 1997 to support a program level of \$24.6 million, at a 8.12 percent subsidy rate.

SBA also proposes to increase the level of microloan technical assistance grants, which are a critical component of this program's success. Funding for these grants is requested at a level of \$16.5 million, with \$2.5 million proposed to be transferred from fiscal year 1997 unobligated balances in the microloan program. This is a 27 percent increase above the fiscal year 1997 level of \$12.9 million.

*Export Loans.*—In fiscal year 1998, SBA will increase its efforts to assist U.S. small businesses that are “going global” through an expanded Export Working Capital Program and implementation of the new “SBA Export Express” package, which is designed to increase the number of lenders willing to extend export working capital to small businesses. The “SBA Export Express” was recently announced by President Clinton in the fiscal year 1996 report issued by the Trade Promotion Coordinating Committee. SBA is developing this tool to provide lenders with an easy method to evaluate overseas market conditions and associated risk, thus allowing them to more readily and accurately assess the “bankability” of particular export transactions, resulting in more capital provided to small businesses. The fiscal year 1998 budget requests \$600,000 to support increased International Trade outreach and the Export Express initiative.

*Disaster Loan Program.*—SBA administers the only Federal government credit program assisting businesses and homeowners who are victims of disasters. The program is the only form of SBA assistance not limited to small businesses. Disaster loans from the SBA help homeowners, renters, businesses of all sizes and non-profit organizations return to their pre-disaster condition. The SBA's disaster loans are often the lifeline in disaster-ravaged communities, helping to spur employment and stabilize the tax base.

Due to the availability of sufficient unobligated balances from fiscal year 1997, no new appropriations are requested for fiscal year 1998 to support the proposed \$785 million in disaster loans. This represents the ten-year average level of program activity, excluding the Northridge earthquake. SBA's policy proposal is to reduce the subsidy rate from 20.02 percent in fiscal year 1997 to 11.44 percent in fiscal year 1998 due to an increase in the interest rate charged to loan borrowers. The interest rate for borrowers “without credit elsewhere” is proposed to be increased to the Treasury cost of funds (anticipated at 6.11 percent in fiscal year 1998). Additionally, the 8 percent interest rate cap for borrowers “with credit available elsewhere” is proposed to be removed.

*Federal Disaster Contingency Funding.*—Emergency needs beyond the 10-year average of the disaster loan program are proposed to be funded from a central contingency fund requested as Funds Appropriated to the President (FAP). This account will include funds for emergency federal disaster response efforts, including the Small Business Administration, the Federal Emergency Management Agency (FEMA), Departments of Agriculture and Interior firefighting, Department of Transportation federal-aid highways emergency relief, and Corps of Engineers emergency activities.

*Surety Bond Guarantee Program.*—SBA is requesting \$3.5 million in new budget authority to support \$1.67 billion in guarantees for the Surety Bond Guarantee Program. In this program which consists of a prior approval program and a preferred surety bond program, SBA guarantees bonds issued by surety companies on behalf of small contractors. The SBA guarantees up to 90 percent of losses incurred on bonds for construction, service and supply contracts of \$1.25 million or less that are performed by small business.

#### *Education and training*

During fiscal year 1998, SBA plans to increase the number of outlets serving our small business customers across the country, including the One Stop Capital Shops, Women's Business Centers, Business Information Centers and Microloan intermediaries. At the same time, SBA plans to expand the activities and improve the effectiveness of its U.S. Export Assistance Centers. SBA will also work to coordinate business education more closely with financial assistance to maximize the chances

of success for small business owners who obtain SBA-guaranteed loans. The Agency will offer education for small businesses in electronic commerce and electronic data interchange, expand its on-line services for small businesses, and focus business development assistance on traditionally under-served groups, such as veterans, women, African Americans, Native Americans, Hispanic Americans, and Asian Americans.

SBA will also continue to integrate the use of private sector resource partners such as the nearly 1,000 Small Business Development Centers and 12,500 Service Corps of Retired Executives (SCORE) volunteers to provide counseling, training and other resources with SBA's financial programs.

*Small Business Development Centers.*—The Small Business Development Center (SBDC) Program operates nearly 1,000 centers in all parts of the country to foster economic development through the provision of management, technical and research assistance to the nation's small businesses. SBDC's are partially funded from Federal appropriations, using significant matching funds to provide for the program's successful operation.

For fiscal year 1998, the Administration proposes to reduce the federal appropriation for Small Business Development Centers to a level of \$57.5 million. Beginning in fiscal year 1996, the congressional restriction on charging fees for counseling was lifted. The SBA assumes that SBDC's use this authority to supplement the level of federal funding to provide enhanced services to small businesses. Education and training are critical to the success of established small business owners as well as new entrepreneurs. Last year, an estimated 850,000 individuals received management training and counseling from SBA's national network of business education and assistance programs, primarily from the nearly 1,000 SBDC's and 12,400 SCORE volunteers.

*Business Information Centers.*—This program is requested at a level of \$500,000 for fiscal year 1998, allowing us to open 10 to 12 new BIC locations. SBA will also support the effort started two years ago to open new Tribal Business Information Centers (TBIC's) to assist Native American entrepreneurs. BIC's combine the latest computer technology, hardware and software, an extensive small business reference library of hard copy books and publications and management videotapes to help entrepreneurs plan their business, expand an existing business or venture into new business areas. The use of software for a variety of business applications offers customers of all types a means of addressing diverse needs. In addition to the self-help hardware, software and reference materials, BIC's have on-site counseling provided by Service Corps of Retired Executives (SCORE) volunteers and other resource partners. The BIC's are one of our most innovative methods of providing a one-stop approach to information, education and training for small business owners.

*Service Corps of Retired Executives.*—The budget requests that funding for the SCORE program return to a level of \$3.5 million, an increase of 6 percent above the fiscal year 1997 level of \$3.3 million. SCORE counsels and trains the largest number of start-up business owners each year. Through one-on-one counseling and workshops conducted by 12,500 volunteers, SCORE reaches approximately 350,000 business owners annually, and because the program utilizes volunteers, the program represents one of the best bargains for the taxpayer in terms of expenditures compared to services delivered.

*Women's Business Centers.*—The fiscal year 1998 budget proposes to continue funding for the Women's Business Centers (formerly known as the Women's Demonstration Sites) at a level of \$4 million for fiscal year 1998, allowing SBA to open 10 to 12 new business centers. These Centers provide valuable counseling, training, and other forms of assistance to the ever-growing population of women-business owners and entrepreneurs.

To expand the information available to the federal government on women business owners, SBA will facilitate a survey by the Bureau of the Census. For fiscal year 1998, the cost of this effort to the Agency will be \$1 million, which is included in the Agency's budget request. This will not reduce any of the funding for our Women's Business Centers.

*One-Stop Capital Shops.*—The One-Stop Capital Shop (OSCS) program is requested at a level of \$3.1 million, an increase of 12 percent above the fiscal year 1997 level. This amount is needed to support the program after an additional six shops are opened in fiscal year 1997, bringing the total number to 17. The OSCS program combines several of SBA's resources into a single program located in Empowerment Zones and Enterprise Communities. Combining the delivery of our financial and business development programs in one location provides a more user-friendly approach to serving our customers.

*United States Export Assistance Centers.*—SBA proposes to increase funding for the U.S. Export Assistance Centers (USEAC's), which provide U.S. exporters with

information and access to all export promotion and export finance activities of the Federal Government. The requested level is \$3.1 million, an increase of 24 percent above the fiscal year 1997 level of \$2.5 million, which will be used to support a network of 19 USEAC's in operation.

*Small business advocacy*

*Office of Advocacy.*—During fiscal year 1998, SBA, through its Office of Advocacy, will assist the small business community by providing the small business perspective in regulatory, policy and legislative forums. This includes providing oversight of the Regulatory Flexibility Act, championing implementation of recommendations from the 1995 White House Conference on Small Business while maintaining close liaison between the Agency and Conference delegates.

SBA requests funding for the Advocacy Database and Analysis at a level of \$1.4 million. This amount represents a funding level similar to the levels provided to this office by Congress prior to fiscal year 1995. It is also the amount required to fulfill the office's statutory mandates. Funding for this office's functions during fiscal year 1996 and fiscal year 1997 has depended on limited reprogramming of SBA's general salaries and expenses. The Advocacy database facilitates the analysis and reporting on small business trends, needs and characteristics, which are relied on heavily by legislators, federal policy makers and the media. The database also provides the basis for the statutorily-mandated annual report, "The State of Small Business: A Report of the President".

*Minority Enterprise Development.*—Through the MED program, SBA assists small businesses owned and controlled by socially and economically disadvantaged individuals to develop to the point where they can compete successfully in the mainstream economy. Through management and technical assistance and the award of sole-source and limited-competition contracts, MED provides a way for such small businesses to grow so that they can create jobs and contribute to our economy.

SBA proposes to increase funding for Section 7(j) management and technical assistance. This program is requested at a level of \$9.2 million, an increase from the fiscal year 1997 level of \$2.6 million. The 7(j) program provides necessary business development and technical assistance to socially and economically disadvantaged individuals, allowing them to improve their skills.

SBA also proposes a \$1.9 million increase in the MED operating budget to improve processing of 8(a) applications and eligibility determinations, and to improve program administration by hiring 10 FTE's and making improvements to the MED program systems.

*Government Contracting.*—SBA's Government Contracting program ensures access to opportunities for government contracts and subcontracts. Each year, these opportunities result in billions of dollars in contract and subcontract awards to small business firms.

The budget requests an increase in funding for the Procurement Automated Source System (PASS), to a level of \$1.2 million. This increase will allow for the maintenance of this important small business database and its expansion as a government-wide source of small businesses to address recent Electronic Commerce initiatives.

*Office of the Inspector General (OIG).*—SBA proposes to increase the Office of Inspector General's (OIG) staffing by 10 FTE above the fiscal year 1997 authorized level. The burgeoning Agency loan portfolio (both in the business loan and the disaster assistance programs) and the increased reliance on lenders to originate and service SBA-guaranteed loans make the oversight role of the OIG critical. Inadequate OIG staffing would be an imprudent risk at a time when "doing more with less" is a policy which must succeed—and failures resulting from fraud, waste, or abuse cannot be tolerated. An increase of \$1.36 million over fiscal year 1997, for a total of \$10.6 million, would allow the OIG to fund a "current services" level of oversight, as well as add 10 FTE to begin addressing SBA's business loan portfolio growth. This level of staffing would ensure at least a minimal level of oversight and assurance that the programs and funds of the Agency are being managed in an appropriate manner.

*Championing Regulatory Reform and Paperwork Reduction.*—During fiscal year 1998, SBA will continue to work with other Federal agencies, including the Occupational Safety & Health Agency (OSHA), the Environmental Protection Agency (EPA) and the Internal Revenue Service (IRS), to minimize the burden of regulations and paperwork requirements on small businesses so that they can be more productive. The Small Business Regulatory Enforcement Fairness Act (Public Law 104-121) enabled SBA to create a national Ombudsman and to establish ten regional regulatory fairness boards. These initiatives began in fiscal year 1996 without separate funding

in SBA's budget. The fiscal year 1998 budget requests \$500,000 to support the Ombudsman and the operational costs of the regional Regulatory Fairness Boards.

*Streamlining the SBA*

Efforts to streamline the SBA can result in a more efficient, cost-effective delivery of services and reduced fraud, waste, and abuse. Improved financial management, expanded training, and increased use of information technology will also result in portfolio quality improvements and, consequently, fewer defaults and reduced loss reserve requirements. These efforts include:

*Participating lenders will service and liquidate all new 7(a) loans.*—Starting in fiscal year 1998, an SBA participating lender will be required to service and liquidate all new 7(a) loans. The lender will liquidate all non-real estate assets of the business prior to SBA's purchase, and complete the liquidation of the real estate after the purchase. This proposal has a direct impact on the lowering of the 7(a) subsidy rate in fiscal year 1998 due to the deferral in the timing of the SBA purchase and the anticipated increase in net recoveries to the government.

*SBA will increase its lender oversight and financial information.*—Over the past four years, SBA has aggressively increased access to capital, reduced staffing, and delegated authority to its private sector partners. In order to support these trends and to maintain a quality portfolio, the budget provides \$18 million for improving portfolio monitoring. This funding will be used to recruit expertise in lender oversight, establish financial performance goals for private sector partners, create a database for tracking lender and portfolio performance, and develop a management information system to provide timely and accurate information to Agency management. Because this improved oversight capability will allow SBA to reduce the risk of default and increase recoveries, this proposal has a direct impact on lowering the 7(a) subsidy rate in fiscal year 1998.

*Business loan assets will be sold.*—Beginning in fiscal year 1998, and through the end of fiscal year 1999, SBA proposes to sell its business loan assets comprised of all direct loans, guaranteed loans purchased, and other liquidation assets, such as collateral acquired as a result of liquidation. The Administration estimates that these business loans can be sold above the government's hold value, producing \$50 million in savings in both fiscal year 1998 and 1999. SBA will sell future defaulted guarantees on an on-going basis. SBA's loan asset sale initiative draws on the success of other federal agencies, such as the RTC, HUD, and the VA, in selling loan assets. These sales will allow the government to take advantage of the efficiencies of the private sector and allow SBA to focus its limited budget resources on extending credit to small businesses rather than servicing and liquidating a growing portfolio.

*Disaster loan assets will be sold.*—Beginning in fiscal year 1998, and through the end of fiscal year 2000, SBA proposes to sell its disaster loan assets comprised of direct loans and other liquidation assets, such as collateral acquired as a result of liquidation. Provisions will be included in the sale contracts to protect the public policy mission of this program.

*SBIC examination and license fees will be used to offset administrative costs.*—A legislative proposal is being made to have the license and examination fees charged SBIC's deposited into the Salaries and Expenses account. This will help offset the administrative costs of this program and provide for the contracting-out of certain administrative activities, such as annual SBIC examinations. The fiscal year 1998 budget includes a minimum of \$1 million as "offsetting collections" from this proposal.

*Improve Office of the Chief Financial Officer expertise.*—This budget requests \$1 million over the current services funding for the OCFO to allow the office to increase staffing, skills, and systems capacity. This funding will allow SBA to continue to improve its financial analysis of loan performance and subsidy estimates, including contract for outside expertise as needed.

*Increase SBA's Full-Time Equivalent (FTE) employment level by 62 above the fiscal year 1997 funded level.*—The budget proposes to increase SBA's regular-funded FTE level by 62 above the level that could be funded within the fiscal year 1997 appropriation. These positions will be specifically targeted to bring technically expert individuals to the priority areas indicated within our proposed budget, such as lender monitoring and oversight, asset sales, 8(a) application processing, financial management and systems.

Mr. Chairman, the fiscal year 1998 budget reflects the President's continuing commitment to the nation's small business community and to a strong SBA. SBA will build upon its successes and accomplishments of the last four years. SBA will continue to serve as a vital catalyst for economic growth through its support of the small business sector, using both the proven successes of its traditional credit and

business education programs, and the new initiatives which are improving the accessibility and efficiency of SBA's services. The budget request for the SBA provides the appropriate level of resources to support these goals and objectives.

#### ADDENDUM

##### RECENT ACCOMPLISHMENTS OF THE U.S. SMALL BUSINESS ADMINISTRATION

The following achievements and others during fiscal year 1996 have laid the groundwork for SBA's continued contribution to this Administration's economic legacy.

##### PROVIDING ACCESS TO CAPITAL FOR SMALL BUSINESS OWNERS

Recent SBA achievements in this area are:

*The 7(a) and 504 Loan Programs.*—Access to adequate start-up and working capital is a key to a healthy small business sector. Since fiscal year 1992, SBA has significantly improved access to capital for America's entrepreneurs through its 7(a) and 504 loan programs. In fact, the agency's annual guaranteed loan volume has more than doubled since fiscal year 1992. Over that same period, the number of loans to non-minority businesses has grown, loans to women small business owners has more than tripled, and loans to minority borrowers have nearly tripled in number and more than doubled in amount (see table below). The important factors in this expansion were the Small Business Lending Enhancement Act of 1995, internal agency reforms, and our emphasis on reaching traditionally underserved segments of the populace.

##### INCREASES IN SBA'S 7(A) AND 504 LENDING

	Fiscal year 1992		Fiscal year 1996	
	No. of loans	Dollars	No. of loans	Dollars
Total .....	26,381	\$6,500,000,000	52,729	\$10,200,000,000
Women .....	3,588	634,000,000	11,452	1,600,000,000
Minorities .....	3,868	1,000,000,000	10,135	2,100,000,000
Veterans .....	3,710	904,000,000	7,155	1,400,000,000

*SBIC Program.*—The SBA has extended greater access to equity capital through the SBIC program which provides leveraged private equity and subordinated debt to small businesses through licensed private venture capitalists. In fiscal year 1996, more than 2,100 businesses received SBIC financing valued at \$1.6 billion. In fact, more private capital has been raised in the SBIC program in the last two years than in the past 20 years combined. It is significant to note that SBA-backed venture capital assisted, at some point, in the development of 18 of the "100 Fastest-Growing Public Firms" in the U.S. as ranked by Fortune magazine in 1996.

*Liquidation Improvement.*—Last year, the Agency developed and began implementation of a Liquidation Improvement Project (LIP) to increase the SBA's dollar recoveries and reduce the Agency's subsidy rate (loss reserves requirement), through timely completion of liquidation and litigation and other improved servicing actions. LIP's impact is reflected in the fiscal year 1998 7(a) and 504 subsidy rates. These rates project that SBA will increase recoveries by 7.3 percent in the 7(a) program and 11.4 percent in the 504 program over historical rates. SBA anticipates that will result in a 20 percent increase in recoveries. LIP has also lowered the estimate cost of loans disbursed in fiscal year 1991–1996 by \$89.4 million.

*Disaster Assistance—Serves as the federal government's "disaster bank" for non-farm private sector losses.*—For over 40 years, SBA has helped more than 1.3 million homeowners, renters, businesses of all sizes, and non-profit organizations pay for rebuilding after disasters, an amount exceeding \$24.2 billion in assistance. In fiscal year 1996, SBA approved 37,822 loans for a total of \$987.9 million in disaster assistance to both homeowners (27,542 loans for \$475.7 million) and large and small businesses (10,280 loans for \$512.2 million). Note that the preponderance of the agency's disaster loans are made to individuals, not businesses, notwithstanding SBA's name.

*Angel Capital Electronic Network (ACE-Net).*—SBA's Office of Advocacy developed the ACE-Net, which was announced by President Clinton in October, to help small businesses raise private equity capital in the range of \$250,000 to \$5 million. ACE-

Net will make it easier for small entrepreneurs to network with “angel” (accredited) investors nationwide by listing investment opportunities on the Internet.

*Microloan Demonstration Program.*—The Microloan Demonstration Program makes very small loans (\$25,000 and under) available to entrepreneurs traditionally considered “unbankable,” largely due to inexperience with credit, credit problems, or lack of assets. Since its inception in 1992, more than 100 lender intermediaries have made \$51 million in microloans to more than 4,000 entrepreneurs, and we have experienced no losses to date due to the oversight provided by the microloan technical assistance providers.

*Minority, Women's, and Veterans' Prequalification Loan Programs.*—SBA has developed two pilot loan programs to provide specialized support and financial assistance to minorities and women. The Women's Prequalification Loan program, which was highlighted by President Clinton in October, is now offered through many of the SBA's district offices, and the Minority Prequalification Loan program continues in its initial pilot stage. Both programs allow SBA to prequalify guarantees for loans of up to \$250,000 before the business owner approaches a bank and to focus on the applicant's character, credit experience and reliability rather than assets. Additionally, SBA is now developing a Veterans prequalification pilot program to further assist veterans seeking to start a small business.

*International Trade.*—In fiscal year 1996, SBA initiated partnership agreements with its counterparts in Russia and Ireland to foster improved cooperation and business opportunities for small businesses in these markets. SBA, now represented in the Gore-Chernomyrdin Commission, is actively working with the banking and small business communities to encourage American small businesses to explore exporting opportunities in the Russian Federation. Similarly, at the State Department's request, Administrator Lader made presentations at the past two Middle East/North Africa Economic Summits and led the U.S. delegation to this year's Asia Pacific Economic Cooperation (APEC) Small and Medium-sized Enterprises Ministerial meeting. Such SBA efforts to promote small business export and development internationally are likely to have long-term positive consequences.

*U.S. Export Assistance Centers (USEAC's).*—Working with the Department of Commerce and Export Import (Ex-Im) Bank, SBA has already opened 15 USEAC's across the country to provide in a single location hands-on export marketing and trade finance counseling. Another 4 USEAC's are scheduled to open in early 1997 for a total of 19. SBA and Ex-Im have also harmonized their Export Working Capital Guarantee programs to achieve a streamlined application process and cut duplication of effort. These actions are important to help small businesses with foreign orders secure financing to produce goods and services for export.

*Research and Technology Development.*—SBA is also improving access to capital for small businesses in the research and technology sector. Under SBA's Small Business Innovation Research (SBIR) program, small businesses propose innovative ideas in competition for specific research and development awards from participating federal agencies with the goal of subsequent commercialization. Federal agencies made approximately 4,500 awards to SBIR firms totaling almost \$900 million in fiscal year 1996; and this amount is expected to grow to 5,500 awards totaling approximately \$1.1 billion in the current fiscal year.

#### REDUCE BURDENSOME REGULATIONS AND UNNECESSARY PAPERWORK REQUIREMENTS THAT INHIBIT THE GROWTH OF SMALL BUSINESSES

*Increase the support for SBA's Ombudsman and Regional Regulatory Fairness Boards.*—For fiscal year 1998, SBA requests \$500,000 to support the “Ombudsman” and the operation costs of the Regional Regulatory Fairness Boards, mandated by the Small Business Regulatory Enforcement Fairness Act (SBREFA), passed by Congress last year.

Recent SBA achievements in this area are:

*Regulatory Reform.*—SBA's page-by-page, line-by-line review of its regulations converted them to a plain-language format and eliminated more than half the pages. The Agency has nearly completed the same reform of its 25,000-page Standard Operating Procedures, which are anticipated to be reduced to about 8,000 pages when completed.

SBA has also achieved significant results in working with other federal agencies to ensure compliance with the Regulatory Flexibility Act. Illustrations include the EPA (simplifying reporting for small firms dealing with hazardous waste), the SEC (developing a simplified registration requirement for small companies), the FCC (structuring bidding rules favorable to small businesses for the auction of personal communications services licenses), and OSHA.

*Paperwork Reduction.*—The SBA's Low Documentation, or "LowDoc," loan application, first established in 1993, is an excellent example of reducing paperwork and providing better service. Through this program, SBA has reduced the paperwork small business owners need to complete to obtain loans of under \$100,000 from a voluminous application to just one page, with dramatically faster approval time. Since smaller loans are less profitable for lenders, LowDoc makes it easier for a lender to ask for SBA's guarantee. In fiscal year 1994, 5,862 SBA LowDoc loans were approved; that number increased to 20,728 loans in fiscal year 1996. Additionally, in 1993, the disaster business loan application was cut in half.

A new pilot, FA\$TRAK, reduces paperwork further by allowing certified lenders to use their own paperwork, complete no SBA forms, and share the risk equally with the Agency by retaining a 50 percent exposure on the loan. In fiscal year 1996, this program accounted for 2,733 loans worth \$113 million.

The average processing time for 8(a) applications has been reduced from 208 days in 1993 to 89 days currently; and through the recent introduction of computer-disk applications, the processing time will soon be reduced to 15 days.

#### STREAMLINING THE SBA

Recent SBA achievements in this area are:

*U.S. Business Advisor.*—In 1996, SBA and the Commerce Department unveiled the U.S. Business Advisor, an Internet service providing nearly all the federal government's available small-business information. SBA's own Home Page, developed in this Administration, has already logged over one million hits per week.

*Centralization and Streamlining.*—SBA has centralized the Preferred Lenders Program (PLP), which authorizes active, best-performing lenders to use their own credit judgment, without SBA's re-analysis, in giving an SBA guarantee on a loan. This provides the opportunity to initiate more efficient, computer-based tracking systems and to streamline the loan eligibility determination process. Centralization played a strong role in increasing the number of loans approved under the PLP process from 4,298 loans totaling \$1.3 billion in fiscal year 1995 to 9,624 loans totaling \$3 billion in fiscal year 1996, nearly 40 percent of the dollar value of all 7(a) loans approved.

*Continue to support centralization.*—SBA continues to look for further opportunities to streamline operations and centralize functions when it improves the efficiency and effectiveness of program delivery and operations and serves to improve customer service. During fiscal year 1996–1997, SBA centralized a large portion of its loan servicing operations, and is currently implementing the centralization of its LowDoc loan processing.

*Contracts in the 8(a) program have increased.*—8(a) contracts have increased from a total of \$4.9 billion in fiscal year 1992 to approximately \$6.6 billion for fiscal year 1996. Also, in the past year, more firms have been removed from the 8(a) program than in the program's cumulative history since 1968, and renewed emphasis has been placed on its economic development mission.

#### EXPANDING ACCESS TO EDUCATION AND TRAINING

Recent SBA achievements in this area are:

*One Stop Capital Shops (OSCS's).*—A good example of SBA's commitment to traditionally underserved constituencies is the OSCS's, SBA's contribution to President Clinton's Empowerment Zone/Enterprise Community (EZ/EC) initiative. In the last 18 months, SBA opened 10 OSCS's in Boston, Kansas City, Detroit, Harlem, Philadelphia/Camden, the Kentucky Highlands, Rio Grande, Baltimore, Tacoma, and Oakland, providing a full range of SBA lending programs, counseling and technical assistance to distressed urban and rural communities. Seven more sites are planned for fiscal year 1997, bringing the total number to 17.

*SBDC's and SCORE.*—Education and training are critical to the success of established small business owners as well as new entrepreneurs. Last year, an estimated 850,000 individuals received management training and counseling from SBA's national network of business education and assistance programs, primarily from the nearly 1,000 SBDC's and 12,400 SCORE volunteers.

*Women's Business Centers.*—Across the country, SBA sponsors 54 Women's Business Centers (formerly the Women's Demonstration Sites), designed to provide long-term training and counseling to current and potential women business owners. Women's business ownership, through these centers and in all of the Agency's programs, has been a major Administration initiative.

*USEAC's.*—The USEAC's jointly operated by SBA, Commerce, and the Ex-Im Bank provide business counseling and training to small businesses interested in exporting and provide them access to programs like SBA's new Export Working Cap-

ital loan program. This year, four new USEAC's are scheduled to open, for a total of 19.

*BIC's.*—Since 1993, SBA has established 38 BIC's, and in the past two years established 15 Tribal BIC's nationwide. These facilities make available to small business owners the latest high-tech hardware, software, interactive videos and telecommunications equipment.

#### ADVOCATING FOR AMERICA'S SMALL BUSINESSES

Recent SBA achievements in this area are:

*White House Conference on Small Business.*—The 1995 White House Conference on Small Business, including the preliminary state and regional conferences held across the country, attracted more than 20,000 small business owners who contributed their thoughts, interests, and ideas to the Clinton Administration and to Congress. At the national Conference, some 2,000 national delegates made 60 recommendations concerning areas as diverse as access to capital, the globalization of markets, health care, pension reform and the effect of taxes on small business formation and growth. During the Administration's first term, an unprecedented number of recommendations from the White House Conference have been addressed, either whole or in part, making the 1995 gathering the most successful White House Conference on Small Business ever. The Office of Advocacy worked tenaciously to keep delegates informed about the Administration's and Congress' progress, distributed an implementation report to participants, and at the end of last year hosted a Washington conference for White House Conference delegates to update them on continuing progress.

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#### BIOGRAPHICAL SKETCH OF AIDA ALVAREZ

Aida Alvarez is administrator of the U.S. Small Business Administration (SBA) and a member of the President's Cabinet.

Alvarez, 47, is a former government financial regulator, investment banker and journalist. She is the first Hispanic woman and the first person of Puerto Rican heritage to hold a position in the President's Cabinet.

As SBA Administrator, Alvarez directs the delivery of a comprehensive set of financial and business development programs for U.S. small businesses. The agency provides financing worth about \$11 billion a year to small businesses across the nation.

Alvarez comes to the SBA after leading the government's first effort to regulate the nation's two largest housing finance companies, the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac). As Director of the Office of Federal Housing Enterprise Oversight (OFHEO), she created a financial safety and soundness oversight program for Fannie Mae and Freddie Mac. These two firms are government-chartered corporations whose operations form the core of the trillion-dollar secondary mortgage market.

Before her OFHEO appointment in June 1993, Alvarez was an investment banker at the First Boston Corporation and at Bear Stearns. Her public service background includes two years as vice president at the NYC Health & Hospitals Corporation. She also served as a commissioner on the New York City Charter Revision Commission, a member of the Governor's State Judicial Screening Committee, and a member of the Mayor's Committee on Appointments.

During her career as a journalist, Alvarez won a Front Page award while at the New York Post. She also was an award winning television news reporter and anchor for Metromedia television (Channel Five) in New York. In 1982, she won an Associated Press Award for Excellence and an Emmy nomination for her reporting of guerrilla activities in El Salvador.

Her past board memberships include the National Hispanic Leadership Agenda, the New York Community Trust and the National Civic League. She is a former board chairman of the Municipal Assistance Corporation/Victim Services Agency, New York.

Alvarez is a native of Aguadilla, Puerto Rico. She is a cum laude graduate of Harvard College. In 1985, she was awarded an honorary Doctor of Laws from Iona College.

#### SUMMARY STATEMENT

Ms. ALVAREZ. I am most enthusiastic about the challenge before me and I am grateful for the opportunity to be the 20th SBA Ad-

ministrator. This is my 22d day on the job, and during that time, I have been quite busy, including being involved at the four different disaster sites in Arkansas, Kentucky, Tennessee, and Ohio. I have to say, I marvel at the courage of the disaster victims, but I also was very impressed by the Federal response. Certainly, I was very impressed by the SBA response. I think many people do not realize that the SBA is the banker to disaster victims and making loans across the board beyond the small business loans. The sort of the first-rate operation that the disaster folks operate is actually typical, I think, of what SBA does and of the smart professional people with a lot of heart who work at SBA.

SBA's budget request for fiscal year 1998 continues the administration's commitment to assisting small businesses. We are requesting \$701.6 million, compared to \$852.4 million for fiscal year 1997. Though this request is reduced from previous years, it does allow for a continuation of all the existing programs, and, in fact, the total credit assistance would be \$14.4 billion for fiscal year 1998 as compared to \$13.8 billion for fiscal year 1997.

#### LOANS

This is a critical time for the SBA. We are shifting the traditional loan-related activities to the private sector and we are also centralizing loan servicing and processing functions. Currently 70 percent of new 7(a) loans are serviced and processed by private lenders and the expectation is that in 1998, all new 7(a) loans will be serviced and liquidated by private lenders.

We are implementing a pilot project to privatize 30 percent of the disaster home loan servicing and we are also starting in fiscal year 1998 to begin selling business loan and disaster loan assets. So there is a great deal going on that should transform the SBA and it is something that we intend to execute in a carefully managed and monitored way to ensure positive results. This is a fundamental shift and it does pose critical questions with public policy implications regarding the objectives of SBA programs and the effect of this fiscal reordering on the SBA mission, its structure, and its employees.

There is a critical element to the budget request related to this transformation and that is the request for an additional \$18 million, which will be used to improve the financial and information management systems as well as to improve oversight of the SBA portfolio and of participating lenders.

We also are asking for an additional \$1 million to conduct a more sophisticated analysis of the loan performance. Our goal is, simply put, to make SBA into a leading-edge financial agency, which will allow us to better assess risk and manage our credit programs.

By the way, related but not part of the budget request, I note that there are a number of deadlines that were part of last year's omnibus appropriation bill that were meant to ensure a timely transformation of these credit programs as well as other programs and I intend to make sure that SBA meets these deadlines.

#### REVIEW OF SBA PROGRAMS

SBA is at a critical crossroads, I believe, as we attempt to bring more Americans into the economic mainstream, and to accomplish

this requires a review of program effectiveness and an infusion of resources, for example, into the minority enterprise development programs. I would also want to see reform and a modernizing of the 8(a) program, which has a need for technology and systems as well as staffing to accomplish that end.

Another segment that needs to be brought into the mainstream are families on welfare, and in the next year, we hope to explore an array of alternatives to providing opportunities for former welfare recipients, including hiring them at the SBA. We will also work with small businesses to explore incentives for employment, coordinating with State efforts, collaborating with other Federal agencies to provide technical assistance, and also using the SBA microloan program to help budding entrepreneurs.

There is no question that SBA plays a critical role as the source of much needed access to capital and credit for small business. The requested authority for the fiscal year 1998 business loans budget is \$173 million [sic], which would provide guarantee authority of \$8.5 billion for 7(a) loans, \$2.3 billion for the 504 debentures, \$832 million for SBIC debentures and participating securities, and \$44 million for microloans, and, of course, for continued support and assistance for disaster victims.

#### TRAINING PROGRAMS

In addition to requesting continued support for SBA's credit programs, we currently train and educate nearly 1 million small business owners and we hope to continue assisting those most in need. We believe that restoring funding to previous levels for the 7(j) program, for example, is one way to help more women, minorities, and disadvantaged individuals, to make them competitively viable. We also propose to add 10 to 12 new women's business centers to the existing network of 54 and to increase the 39 business information centers, the BIC's, by 10 to 12. We have heard overwhelming praise for these centers. They do a fabulous job and we think they deserve strong funding.

We also hope to continue support for SCORE and the SBDC's. We are strongly committed to the SBDC program. They do a very capable job in counseling and training across the country and we want them to continue their fine work. As the budget reflects, SBA wants those benefitting from the program to bear a share of the costs and we propose that they pay reasonable fees for the services rendered. We will work very closely with the SBDC's to ensure their continued viability and success.

And finally, I hope to follow closely the progress of the ombudsman and the newly created Regulatory Fairness Board. I think that those boards, together with the Office of Advocacy, should protect the interests of the small business community from regulatory missteps.

SBA has played a key role in the growth and support of small business throughout its history. There are many significant achievements. SBA now manages a \$42 billion loan portfolio and it has improved the lives of millions of Americans, helping them to start, run, and succeed in their own small businesses. I hope to add to this list of achievements and accomplishments.

This is an important time of transition. I look forward to working with you closely to improve the way in which our Government serves small business. I welcome your questions.

Senator GREGG. Thank you. Thanks for that overview. I appreciate that.

First off, let me say that I think the Small Business Administration does a superb job, at least in my State. It has a track record of being very successful in helping people who are starting businesses, especially those who probably would not otherwise be able to find financing, and it is a well-run organization.

#### DISASTER FUNDING

There are a few issues, though, that do stand out that I would like to get your thoughts on. The first is the disaster in Arkansas. These disasters appear to happen with more regularity in recent years, but there does not appear to be any significant disaster money in your budget. Can you tell us how you plan to pay for it?

Ms. ALVAREZ. SBA makes an assessment of the future disaster funding need by using a 10-year rolling average to calculate what the projected funding requirements might be. As a result of that calculation, the administration felt that there was sufficient funding that could be carried forward.

Senator GREGG. You do not expect to ask for supplemental funding, then?

Ms. ALVAREZ. That is not the expectation. The expectation is that the existing moneys would cover us not only in fiscal year 1998 but there would also be some left to go forward to fiscal year 1999, God willing.

#### 7(A) PROGRAM

Senator GREGG. In the 7(a) program, you talked about this \$18 million you are going to spend. Have you checked with any of the other agencies that do the management, such as Fannie Mae, to see how they do it? There is a lot of experience out there.

Ms. ALVAREZ. You know I was the regulator for Fannie Mae and Freddie Mac. That was my previous incarnation.

Senator GREGG. So then you are bringing in their experience.

Ms. ALVAREZ. First of all, the proposal for the \$18 million, is well considered, and frankly, it may not be enough given what it costs to really create an infrastructure that is very sophisticated technically. It is, I think, potentially a very modest request, but it is best to proceed carefully.

I certainly have not had the opportunity yet but intend to devote time and also work to see to what extent the Fannie Mae/Freddie Mac technology is relevant here. But I think a great deal of time and thought went into this.

Greg Walter is the Deputy Chief Financial Officer [CFO] at SBA. Do you want to comment on that?

Mr. WALTER. Sure. Mr. Chairman, we have already reviewed three of the current systems that are being used throughout the Government. We went over and visited with Ginnie Mae a couple of weeks ago and saw what they call the issuer portfolio analysis data bases and the correspondent portfolio analysis data base system which they use at VA and HUD, and then we have also visited

with Farmers Home to look at their policy financial analysis model system.

We think there is some portability, if you will, in the technologies they are using with what we will need, but we have to look into it further as we go along to see exactly how much can be used and how much distinction there is between what SBA needs and what they do.

Senator GREGG. We would strongly encourage you to do that. You know, we find in this committee, and not specifically with SBA but with a number of other agencies, that they keep trying to reinvent the wheel when some other agency in Government has already gone through and invented the wheel.

Ms. ALVAREZ. Right.

Senator GREGG. It does seem like a terrible waste of ability. It is a turf issue to some degree, but I would suggest a formalized system of going out and finding out what is out there and using that expertise to the extent that you think it is appropriate.

A number of industry lenders claim that with the 7(a) program the amount available in that area is underestimated. What are your thoughts in response to that?

Ms. ALVAREZ. We have been monitoring that very closely, in fact, on a daily basis. Presently, we think we are OK, that we have got enough funding to meet the needs, but frankly, if the demand steps up, we think there is a possibility of shortfall. We will certainly be talking with you about it.

Senator GREGG. That is going to be a problem, both in the 7(a) program and 504 program, because we are going to be under tremendous pressure in this committee. For a variety of reasons, the White House has targeted this committee for dramatic increases in spending but has not agreed to pay for them in different accounts. For example, in the State Department, they want an extra \$1 billion for the United Nations and in the Justice Department they want a huge amount of money for juvenile justice.

We are not going to have a whole lot of flexibility, so we need to know what the numbers are because you are not going to be coming back to us. You are going to have to live with what we give you. I hope you are as confident as you appear with these numbers, because it is probably what you are going to end up with.

There is a little bit of history on the 7(j) program. The only reason it survived was because of me. It would have been gone 1½ years ago. The prior chairman of this committee would have eliminated it, as did the House. I notice you are expanding it. What I am interested in is what the expansion is going to be used for.

Ms. ALVAREZ. There is an expectation that as a result of Adarand, the question of who becomes eligible, for example, to be an 8(a) firm will expand, as well. The test, if you will, the strictness which eliminated about 50 percent of the applicants from that field will be loosened and many women and other disadvantaged who might not have been eligible will be eligible. The thought is that really the intent of 8(a) was that this should be a business development program, that we are going to need funding to provide expertise, counseling, and training, at various stages in the development of these companies. That is why we are requesting the expansion.

Senator GREGG. That gets away from the basic education and workshop type of approach.

Ms. ALVAREZ. It is not exclusive.

Senator GREGG. Do you expect the education and workshop type of approach to be maintained or is that going to be reduced in order to fund the review of the 8(a) accounts?

Ms. ALVAREZ. We had success with the education workshops, but I think as we expand the pool, there is going to be a need for one-on-one counseling and other types of training. It would be an expansion, not an elimination of the existing approach.

#### SMALL BUSINESS DEVELOPMENT COUNCILS

Senator GREGG. How about these fees for the small business development councils [SBDC's]? How are people going to react to that? What do you think they are going to be and how much pressure are they going to put on utilization?

Ms. ALVAREZ. In our judgment, the intent is certainly not to diminish or to reduce the services rendered because we believe that, in fact, the users of the SBDC's will pay. We are talking about very modest fees with a great deal of flexibility on the part of the SBDC to decide whether someone should be charged and how much they should be charged.

The SBDC's already charge fees for training. Last year, they charged and made \$4.8 million in training fees. In addition, other programs that serve comparable populations, for example, the women's business centers charge fees to women who are considered economically and socially disadvantaged and they actually have a very successful track record.

So we do not think this should be an impediment. We think this will be very modest. We think it is consistent with what other programs are asking and we hope to continue to support what the SBDC's do.

Senator GREGG. How are these fees being accounted for? Are they going directly back into your budget?

Ms. ALVAREZ. The \$4.8 million?

Senator GREGG. Yes.

Ms. ALVAREZ. They are not.

Senator GREGG. Are they being accounted for in the way that the other fees—

Ms. ALVAREZ. Yes.

Mr. MORHARD. They are used to run the program.

Mr. WALTER. The SBDC's define it as program income, so it comes back into the SBDC network and they use it to do their agenda. It is not part of the matching formula.

Ms. ALVAREZ. It is not part of the matching formula.

Mr. WALTER. It does not come back into the SBA or count as matching funds against the grant funds.

Senator GREGG. How does that affect the budget?

Mr. MORHARD. It does not affect the budget. That was part of the 1990 agreement.

Senator GREGG. I do not understand. I am going to have to have someone explain that to me at some point.

Ms. ALVAREZ. All right.

## MICROLOAN PROGRAM

Senator GREGG. OK. How about this Microloan program? How much have you spent out of that, do you know, and where do you stand on it, and whether it is working?

Mr. WALTER. On the lending program itself?

Senator GREGG. Right.

Mr. WALTER. I can tell you, through the end of January, we have made about \$1.2 million in the direct program and just a little over \$1 million in the guarantee program.

Senator GREGG. How much is left in those accounts?

Mr. WALTER. This year, we have availability of about \$37 million in the direct program and \$22 million in the guarantee, so very little has been spent on those programs.

Senator GREGG. What are your plans for that? Do you plan to accelerate that or can you move that money around?

Ms. ALVAREZ. My understanding is that little has been spent partly because of the pilot nature of the program; that there are lots of kinks to be worked out of the system. These intermediaries were wanting assurances on technical assistance funds and so far, there have been no defaults to SBA related to these loans.

Senator GREGG. It is a little early.

Ms. ALVAREZ. So we are on a good path there. And also, I think that as people become more familiar—as long as there is technical assistance associated with those loans, the expectation is that they will be successful and that is a substantial part of what the funding goes for.

Greg, is it not 25 percent?

Mr. WALTER. One other clarification here, too, is the formula that is in the statute calls for us to provide technical assistance for loans that were made in prior years as long as they stay outstanding in the portfolio, so a good portion of SBA's current technical assistance budget is used to continue to fund technical assistance for loans that were made in prior years, which restricts our ability to add new loans into the system and to add new intermediaries.

So the technical assistance component of the program is critical to not only maintaining the current portfolio but also to allow us to expand the program. If there is not sufficient technical assistance to support the micro intermediaries to enter the system, they will not even come into the process.

Senator GREGG. If you were to point out the one thing in the agency that you are most interested in pursuing and expanding or improving, what would that be?

Ms. ALVAREZ. I am very focused on making SBA a leading-edge financial agency. I really think that not only is SBA positioned to do some interesting things with the private sector which I hope will result in economies, efficiencies, and potentially a reduction in cost to the taxpayer and an increase of access to credit to the consumer. Given my recent background as the direction of OFHEO, I just feel that that is at the top of my list.

## SBA 2000

Senator GREGG. This SBA 2000, have you gotten very far into that yet or do you have a program for that?

Ms. ALVAREZ. I have not gotten into it. Oh, you are talking about the——

Senator GREGG. The planning.

Ms. ALVAREZ. You are talking about the planning for the transformation into the——

Senator GREGG. No; I am talking about your plans for the strategic effort called SBA 2000 that is just starting out.

Ms. ALVAREZ. Right. OK. With respect to the strategic planning, the 6-year strategic plan, the Government Performance and Results Act [GPRA], we have actually begun to talk to the folks on the Hill to get their input. In my 22 days as Administrator, I have had an opportunity to read the plan. I cannot say that I have had an opportunity to have a meeting about it.

Senator GREGG. Is there any money in here for that planning process, do you know?

Mr. WALTER. No, Senator, there is not.

Senator GREGG. Very good. Is there anything else you think we should know?

Ms. ALVAREZ. We are an open book and it is in front of you in the form of a budget. I look forward to working with you.

Senator GREGG. So do I. If you have problems or concerns or other issues, give me a call, or give Jim a call. Obviously, if you are going to have problems with these accounts and you see it coming, the earlier we know, the better, especially with the disaster issues and maybe the underestimation of the 7(a). This is important, so give us lead time.

Ms. ALVAREZ. Yes, sir; we will do that.

#### ADDITIONAL COMMITTEE QUESTIONS

Senator GREGG. Thank you for coming. I appreciate it. If there are any additional questions, they will be submitted to your agency for response.

Ms. ALVAREZ. Thanks very much.

[The following questions were not asked at the hearing, but were submitted to the administration for response subsequent to the hearing:]

#### QUESTIONS SUBMITTED BY SENATOR PETE V. DOMENICI

##### SMALL BUSINESS REGULATORY ENFORCEMENT FAIRNESS ACT ADVISORY PANELS

*Question.* Will you, as Administrator, give the support and resources necessary to ensure these panels are established and become an integrated force within the regulation review process?

*Answer.* Yes, of course. But the agency will need some help from Congress.

The Office of Advocacy has been very active in promoting compliance with SBREFA. It has conducted training sessions for more than 600 Federal executives, including economists. It has also held meetings with small business trade association executives on the new law and is currently conducting additional sessions for trade association staffs.

One thing that the new law has done is place a greater emphasis on data that will help agencies, and the Office of Advocacy, measure the impact of proposed regulations and their alternatives on small business. For the past two years, research funds for the Office of Advocacy have not been explicitly appropriated by the Congress. The Agency has used discretionary authority to reprogram minimum funds to finance very basic economic research. For fiscal year 1998 we are requesting \$1.4 million specifically for SBA's database and for economic research by the Office of Advocacy, a significant portion of which will be used by the panels reviewing OSHA

and EPA regulatory proposals. These funds are needed if Advocacy is to fulfill the statutory mandates established by Congress.

*Question.* What is the current status of establishing the small business advisory panels mandated by SBREFA?

*Answer.* Under SBREFA, OSHA and EPA are to convene small business regulatory review panels if the agencies believe a rule they are contemplating will have an impact on small business. The Office of Advocacy will provide names of small entities that both the agency and the panel should consult. The entities recommended by Advocacy are selected according to their particular stake in the issue and will vary from rule to rule. The panel then convenes to review all the materials provided by the Agency to the small entities and the small entities' comments and recommendations on the materials. This review is to occur before an agency publishes a proposed regulation for public comment as required by the Administrative Procedure Act.

OSHA has convened one panel on a proposal to limit employee exposure to TB infections. The panel completed its report and submitted it to the agency. OSHA is planning to publish its proposed regulation in the very near future. The Office of Advocacy will submit comments for the record on the proposal as appropriate. OSHA has also started outreach to small entities, many of which were recommended by Advocacy to convene a second panel on another issue. The outreach will help the agency determine, preliminarily, the extent and nature of the impact on small entities.

EPA has convened one panel on off-road diesel emissions. The panel's work is currently in process, with an estimated completion date soon. EPA has also convened a panel for Implementation of Phase I of the National Ambient Air Quality standards for ozone and particulate matter.

#### OFFICE OF WOMEN'S BUSINESS OWNERSHIP

*Question.* Has the SBA fully integrated the OWBO into its decision making activities so that other programs and activities of the agency take into account and address the needs of women owned businesses? Please provide examples.

*Answer.* SBA has integrated the OWBO by taking into account the needs of women's business in other programs and activities of the agency. For example, SBA involves the needs of women in the following programs:

##### *Access to Capital*

From 1992 to 1995, SBA increased loans to women by almost 300 percent. SBA went from making 3,588 loans to women in fiscal year 1992 to making 11,452 in fiscal year 1996 (this includes the 7(a) and 504 programs).

The Women's Pre-Qualification Pilot Loan program, in effect since June 1994, has made more than \$58 million in loans in 16 pilot sites. Under the program, SBA agrees, up-front, to guarantee the loan if the borrower meets the lenders' credit criteria. Loans under these programs are limited to amounts of \$250,000 or less. The prequalification program focuses primarily on the character, credit and apparent ability of the applicant to repay the loan from earnings. On Oct. 22, 1996, former Administrator Philip Lader signed a decision memorandum to extend the program nationwide.

In 1996, women received 28 percent of LowDoc loans. These loans of less than \$100,000 combine a simplified, one page application with a rapid response from SBA loan officers, usually only two or three days.

More than 40 percent of all SBA microloans go to women. The Microloan program targets individuals, often low-income, who would not otherwise be able to obtain standard loans from financial institutions, largely due to bad credit, no credit, or lack of assets. The average microloan amounts to \$10,800 and creates three new jobs.

##### *SBA Offices and Resource Partners*

All SBA resources are available to men and women equally. Services focused on women business owners vary from district office to district office. Individual District Directors have the discretion to assign an employee to serve as a Women's Business Ownership Representative and to decide how much time should be spent on that task. The Office of Women's Business Ownership has insufficient resources to assign an employee full-time—as it has in the past—to serve as a field liaison.

District SBA offices, often in conjunction with SCORE members, organize mentoring for current and aspiring women business owners through the Women's Network for Entrepreneurial Training. Both peer-group and one-on-one mentoring is offered. SCORE has just added its first woman to its board of directors to help

spearhead an effort to bring more women into SCORE as both counselors and clients.

By sponsoring research on women and entrepreneurs, the Office of Women's Business Ownership and the Office of Advocacy promote thoughtful development of public policy to foster women's business ownership. The Office of Advocacy worked with the OWBO and the National Women's Business Council to introduce its new Internet-based Angel Capital Electronic Network (ACE-NET) at a White House meeting of key women business leaders. OWBO is continuing to work with the Office of Advocacy on PRO-NET, an offshoot of the ACE-NET technology that will help all small businesses, including women-owned business, get government contracts.

The Office of Women's Business Ownership has a homepage that is part of the SBA's World Wide Web site. The OWBO page reaches women regardless of their location and provides links to 40 related websites. ([www.sba.gov/womeninbusiness/](http://www.sba.gov/womeninbusiness/))

To increase women's access to capital for high-technology research, OWBO and the Office of Technology jointly sponsor seminars for women on accessing the Small Business Innovation Research grant program.

*Question.* What are the current prime contracting and sub-contracting goals for women owned businesses for each participating federal agency?

*Answer.* Please see the attached chart which details the goals and actual awards of prime contracts and subcontracts to women-owned businesses by the major federal purchasing centers for fiscal years 1994 and 1995, the latest years for which federal agencies have reported their awards to SBA.

TABLE 11.—WOMEN-OWNED SMALL BUSINESS SHARE OF FEDERAL PRIME CONTRACTS: PERFORMANCE BY MAJOR FEDERAL AGENCIES, FISCAL YEAR 1994 AND FISCAL YEAR 1995  
[Dollars in millions]

	Fiscal year 1995				Fiscal year 1994			
	Agency projections		Actual awards		Agency projections		Actual awards	
	Total dollars	WOB share Dollars      Percent	Total dollars	WOB share Dollars      Percent	Total dollars	WOB share Dollars      Percent	Total dollars	WOB share Dollars      Percent
Department of Agriculture .....	2,643.8	92.5      3.5	3,115.5	87.4      2.8	2,905.1	72.6      2.5	3,897.5	123.0      3.2
Department of Commerce .....	766.0	38.3      5.0	829.6	54.4      6.6	697.4	27.9      4.0	750.8	27.3      3.6
Department of Defense .....	103,900.0	1,766.3      1.7	110,033.0	1,994.0      1.8	100,000.0	1,599.9      1.5	112,013.0	1,857.0      1.7
Department of Education .....	310.0	15.5      5.0	376.6	12.7      3.4	284.0	10.0      3.5	329.9	8.9      2.7
Department of Energy .....	16,480.0	415.0      2.5	16,375.4	505.5      3.1	18,000.0	639.9      3.5	17,104.7	418.2      2.4
Department of Health and Human Services .....	2,818.1	113.2      4.0	3,163.0	816.3      5.9	2,538.5	103.3      4.1	3,119.3	149.6      4.8
Department of Housing and Urban Development .....	906.5	63.5      7.0	668.9	49.9      7.5	690.1	38.0      5.5	685.3	55.5      8.1
Department of the Interior .....	1,292.8	53.0      4.1	1,289.2	63.5      4.9	1,282.3	51.3      4.0	1,386.3	65.0      4.7
Department of Justice .....	1,964.0	58.9      3.0	1,941.3	49.2      2.5	1,786.4	53.6      3.0	1,983.3	47.2      2.4
Department of Labor .....	766.8	39.8      5.2	871.7	24.1      2.8	767.7	32.5      4.2	846.4	17.3      2.0
Department of State .....	500.0	25.0      5.0	636.1	42.2      6.6	475.0	23.8      5.0	616.6	38.3      6.2
Department of Transportation .....	3,363.1	67.3      2.0	2,513.8	96.9      3.9	3,601.0	72.0      2.0	2,471.9	55.1      2.2
Department of the Treasury .....	1,500.0	78.0      5.2	1,278.5	66.7      5.2	1,500.0	60.0      4.0	1,310.6	64.0      4.9
Department of Veterans Affairs .....	2,000.0	60.0      3.0	4,655.6	226.7      4.9	3,000.0	72.0      2.4	4,114.8	155.9      3.8
Environmental Protection Agency .....	1,400.0	70.0      5.0	1,144.8	26.5      2.3	1,300.0	26.0      2.0	1,342.1	18.5      1.4
General Services Administration:								
Federal Supply Schedule <sup>1</sup> .....	2,465.3	46.2      6.3	2,806.8	47.8      7.2	2,459.3	30.8      5.9	1,801.0	34.0      6.3
Non-Federal Supply Schedule .....	5,443.0	163.3      3.0	6,531.9	135.8      2.1	5,428.6	97.7      1.8	6,461.9	129.2      2.0
National Aeronautics and Space Administration .....	10,643.0	112.0      1.05	10,109.0	159.1      1.6	10,430.0	104.3      1.0	9,766.0	118.4      1.2
Tennessee Valley Authority .....	1,945.0	31.1      1.6	2,956.2	43.8      1.5	1,700.0	23.8      1.4	2,112.0	14.1      .7

U.S. Agency for International Development .....	433.9	21.7	5.0	1,431.1	33.1	2.3	413.3	18.2	4.4	1,505.5	21.7	1.4
All Others .....	900.2	29.5	3.3	901.0	40.6	4.5	873.3	27.4	3.1	936.0	48.7	5.2
Total .....	162,441.5	3,360.1	2.1	173,629.2	3,946.2	2.3	160,132.0	3,075.2	1.9	174,554.9	3,466.9	2.0

<sup>1</sup> GSA FSS goal percentages are based on number of contracts awarded.

Note: Dollar or percentage figures may vary slightly because of rounding or necessary corrections of figures submitted in year-end reports by some federal agencies. Information not given in written reports was obtained by telephone.

Source: U.S. Small Business Administration, Office of Government Contracting, unpublished data, 1996.

*Question.* What percentages of federal contracts are currently being awarded to women owned businesses for each respective agency?

*Answer.* Please refer to the above answer.

*Question.* What recommendations does the SBA propose to Congress concerning efforts to increase the number of government contracts being awarded to women-owned businesses?

*Answer.* A major priority of the Office of Women's Business Ownership is to expand public and private market opportunities for women-owned business. As an advocate, OWBO is involved in the following initiatives:

- The fifty-three Women's Business Centers offer procurement training;
- The Federal Procurement Pilot Program for Women-Owned Businesses brings together SBA officials with representatives from federal agencies with substantial procurement budgets to work toward increasing opportunities for women in the federal marketplace;
- Small Business Innovation Research seminars);
- PRO-NET;
- SBA sponsored procurement training conference, Women \$ and Sense;
- Update of the publication "Women Selling to the Federal Government."

*Question.* What current plans are being made to expand the OWBO Demonstration Sites program to all fifty states? Please provide examples.

*Answer.* OWBO's goal is to establish a Women's Demonstration Program site in every one of the fifty states. This year, the program has the budget to open four new sites. If reauthorized at the requested level of funding of \$4 million for fiscal year 1998, OWBO can open 10 to 12 new sites.

To enhance the success of the Women's Demonstration Program, the Office of Women's Business Ownership began in 1995 to build a women's business center in cyberspace. This service, the Online Women's Business Center, consists of a private Intranet site shared by the 53 women's business centers, and an Internet site that will be available to women in all geographic locations every day at all times of day.

#### PAPERWORK REDUCTION WITHIN THE SMALL BUSINESS ADMINISTRATION

*Question.* What goals were established for the SBA with regard to the reduction of federal paperwork?

*Answer.* SBA's continuing goal is reducing federal paperwork. With respect to the Financial Assistance programs the goals are as follows:

*Review and revise loan application documents and procedures to minimize paperwork.*—The SBA is currently reviewing its application forms and required documentation to determine whether any can be eliminated, combined with others or simplified. In addition, the review of the forms includes amending the language in the forms to use plain English to provide easier understanding and interpretation. Frequently, the frustration of applicants with paperwork is from a lack of understanding of what is wanted rather than the amount of information being sought.

*Review and revise loan closing documents and procedures to achieve easier understanding through use of plain English language and to reduce the amount of paperwork required to close a loan by combining as many documents as possible.*—The SBA is currently reviewing and amending the loan Authorization and other loan documents for each of its lending programs to eliminate unnecessary conditions, convert the wording to plain English, and achieve standardization, to the greatest degree possible given differences between state statutes.

SBA has just completed a revision to its 7(a) loan closing process to eliminate the requirement that the lenders submit documents to SBA at loan closing, and substitute the submission of a single document that provides critically needed certifications and information.

*Develop and implement a centralized franchise clearance process.*—We anticipate that changing these procedures will permit a shorter response time on franchise applications and maximize utilization of SBA's limited personnel resources. Loans to franchise operations account for 6.97 percent of fiscal year 1996 loan volume and 7.7 percent of fiscal year 1997 year-to-date loan volume, but currently take more time to process than non-franchise business loan applications.

*Question.* Other than the Low Document Loan Program (LowDoc), what efforts are being taken within the SBA to curb unnecessary paperwork?

*Answer.* The SBA is working to expand the Preferred Lender Program (PLP) and encouraging lenders to utilize it more. The Agency has also developed and implemented on a pilot basis, a similar program for preferred Certified Development Companies (CDC's), the Premier Certified Lenders Program (PLP).

The SBA is currently reviewing the FA\$TRAK pilot loan program to determine whether to expand it from 18 lenders (with approximately 42 additional affiliates)

now authorized to use these expedited procedures; and to identify any necessary changes in procedures or policies to better serve applicants or protect the interests of the Government. Under this pilot, specified lenders may make and close small business loans of up to \$100,000 using their own forms and procedures. In return, SBA guarantees only 50 percent of the loan.

SBA plans to increase its use of automated (paperless) systems which will allow lenders to send information to SBA from their databases electronically. There are several advantages to this, including speedier transmission of application and other loan related requests, elimination of transposition and other errors due to re-entering the same data more than once, and the ability to have all information readily available without having to use physical file folders. SBA's staff would be able to concentrate on review of information—non data entry and the handling of documents. Ultimately SBA would only need to hold documents necessary for legal action. We are currently testing electronic transmission of loan applications with a small numbers of lenders.

*Question.* How many loans have been issued under the Low Documentation Loan pilot program?

*Answer.* From the inception of the LowDoc pilot in late November, 1994 through February 28, 1997, SBA has approved 63,259 loans totaling \$3.9 billion.

#### SMALL BUSINESS DEVELOPMENT CENTERS

*Question.* What efforts are currently being made to make Small Business Development Centers be utilized more effectively?

*Answer.* The Small Business Administration continues to integrate Agency programs into the SBDC delivery system. With this as an objective, the Agency has established goals for SBA District Directors to emphasize, encourage, and develop positive relationships with SBDC's. As part of the effort to improve the utilization of SBDC's, the Agency has actively participated in SBDC conferences, briefing them on SBA programs. In May of this year, the Agency will conduct training for its Field personnel with SBDC oversight responsibilities. SBA's District Directors and SBDC Directors will also participate in this training. SBA has also successfully negotiated agreements with other Federal entities, such as the Department of Commerce, the Environmental Protection Agency and the Department of Energy, to deliver certain of their services. Consequently, the SBA has been able to successfully expand the scope of the SBDC Program to provide greater assistance to the small business community. The Agency is currently revising its regulations and Standard Operating Procedures governing the SBDC Program. During 1996, the Agency completed a total of fifteen (15) program and financial examinations in an effort to make SBDC's more effective.

*Question.* What recommendations or changes to SBDC's do you propose Congress should consider as we begin to debate the reauthorization of the SBA?

*Answer.* The Agency recommends that it be given discretion under the SBDC funding allocation formula to provide additional funds to smaller SBDC's in order to help maintain a network in those states. SBA also recommends revising the ratio of matching funds required from SBDC's from \$1 for each federal dollar in fiscal year 1997 to \$1.60 for each federal dollar in fiscal year 1998 and thereafter. The Agency further recommends that SBDC's be permitted to use program income (revenue generated from fees and other sources) as a match for Federal funds.

*Question.* Understanding the unique funding partnerships involved with these centers, do you anticipate any changes in the current partnerships of these centers due to a reduced SBA budget?

*Answer.* In addition to the legislative changes noted above, the Agency would also encourage SBDC's to increase their reliance on their non-Federal partners to offset the Federal reductions.

These initiatives should result in maintaining the program at the same overall level of funding with a larger portion of the matching funds coming from the SBDC's' other partners.

*Question.* Does the SBA have any plans to begin charging counseling fees for the services business owners and entrepreneurs receive at these centers?

*Answer.* While the SBA has no plans to mandate that SBDC's charge fees for counseling, SBDC's are now allowed to charge such fees since Congress removed the prohibition against fees previously contained in appropriations legislation. SBDC's' ability to raise additional funds through the charging of fees for counseling is one of several options for keeping the program operating at the current funding level.

#### REAUTHORIZATION OF THE SMALL BUSINESS ADMINISTRATION

*Question.* What current activities will be sustained with these resources?

Answer. The fiscal year 1998 President's budget proposes to continue all programs conducted in fiscal year 1997 and proposes increases in a number of programs to expand access to capital, assist disadvantaged small businesses, and provide education and training. Some of the more significant aspects of our fiscal year 1998 budget request include:

- The budget requests \$153 million to provide guaranty authority of \$8.5 billion for the 7(a) General Business Loan Guaranty program;
- For the Section 504 Certified Development Company loan program, no new budget authority is required to provide a program level of \$2.3 billion;
- For the Small Business Investment Company program, \$20.2 million in budget authority is requested to provide program levels of \$376 million of debenture guarantees and \$456 million for participating securities;
- For the microloan program, \$44.3 million in microloans will be funded and an additional \$16.5 million is requested for technical assistance to microloan borrowers;
- \$18 million is requested to support enhanced lender monitoring and oversight;
- \$600,000 to support increased International Trade outreach and implementation of the new "SBA Export Express" lending tool;
- No new budget authority is requested for the disaster loan program, as expected carryover from fiscal year 1997 will be used to support the \$785 million program. The fiscal year 1998 budget proposes to increase the interest fee to borrowers "without credit elsewhere" to the Treasury cost of funds and the 8 percent interest cap for borrowers "with credit available elsewhere" is proposed to be removed;
- \$57.5 million in federal funding is requested for the Small Business Development Center (SBDC) program;
- \$3.5 million is requested to provide \$1.7 billion in surety bond guarantees;
- An increase in funding is requested for the Minority Enterprise Development (MED) program to restore 7(j) business development assistance funding to previous levels;
- A restoration of \$1.4 million to the Office of Advocacy is requested for data collection and research that is statutorily mandated;
- In support of women business entrepreneurs, \$4 million is requested to provide technical and business development assistance through the Women's Business Centers;
- \$500,000 is requested to support SBA's Regulatory Ombudsman and the regional Regulatory Fairness Boards; and
- \$10.6 million is requested for the Office of Inspector General.

*Question.* What activities will be reduced or eliminated due to budget reductions?

Answer. The fiscal year 1998 budget does not propose the elimination of any programs, however, the budget does propose reductions from fiscal year 1997 funding levels for the following programs:

*Non-Credit Programs:*

Small Business Development Centers will be reduced by \$16 million which is proposed to be offset, at least in part, through charging fees for counseling; and

Funding for the disaster loan making function is reduced from the fiscal year 1997 estimated level of \$103.9 million to \$98.3 million consistent with previous funding levels.

*Credit Programs:*

No funds are requested for the Disaster Loan program, as sufficient unobligated balances were estimated to be available in fiscal year 1998. This is a reduction of \$218.4 million from the fiscal year 1997 appropriations level;

Appropriations requested for the 7(a) General Guaranteed Business loan program are reduced by \$45 million from fiscal year 1997. Due to a reduced subsidy rate, a program level of \$8.5 billion is proposed, up from \$7.8 billion in fiscal year 1997;

For the microloan program, no new budget authority is requested because \$44 million in microloans will be funded through the estimated carryover of unused budget authority from fiscal year 1997. This is a reduction of \$4 million from the fiscal year 1997 appropriations for this program;

\$3.5 million is requested to provide \$1.7 billion in surety bond guarantees. This compares to the \$3.8 million enacted in fiscal year 1997 for this program; and

For the Small Business Investment Company program for participating securities, \$11.6 million is requested to support a \$456 million program level. This compares to the fiscal year 1997 enacted level of \$13.5 million for this program.

*Question.* What current efforts are being taken to streamline SBA programs to provide more access to assistance? Please provide examples.

Answer. Although the President's fiscal year 1998 Budget for the SBA requests \$150 million less than was appropriated in fiscal year 1997, the actual salary and expense portion of the budget is approximately the same as in fiscal year 1997. For fiscal year 1998, in order to cut costs of our programs, we are looking for ways to have those who benefit directly from our programs help pay for them. For example, in the Small Business Development Center (SBDC) program we are encouraging SBDC clients to pay a fee for the counseling services they receive. We believe that by charging reasonable, limited fees, we can re-direct the savings captured to extend assistance to other small businesses. We will also continue to focus on improving the way we manage and deliver our programs. For example, in order to improve access to capital, we will continue to improve efficiencies in processing, servicing and liquidating loans.

More specifically, the President's Budget for fiscal year 1998 incorporates a plan for continued modifications in the way we do business. In recent years, SBA's financial and operational environment has changed in several ways:

- For business loans, SBA now almost exclusively extends credit through guarantees, not direct loans.
- Participating lenders under the 7(a) and 504 programs are performing more of the loan origination processing, such as data collection, financial and credit analysis, collateral valuation, and actual loan approval.
- Participating lenders are performing more of the routine loan servicing and liquidation activities.
- New technology is being introduced into all phases of loan administration to allow for the collection, analysis, transfer, and use of more information in managing programs.
- SBA is consolidating more of its routine loan approval and servicing functions at centralized locations to rely more on technology and gain economies of scale, thus mirroring private sector practices.
- SBA will begin selling its loan assets starting in fiscal year 1998 in order to free up resources and concentrate more on essential lending activities.

*Question.* What efforts are being taken to ensure all programs such as the Office of Women Business Ownership, Small Business Development Centers and Service Corps of Retired Executives are being made a part of the decision making processes within the SBA regarding the reauthorization of SBA?

Answer. The SBA Programs focusing on financial assistance (Finance, Investment, International Trade, and Surety Bonds) and business education and training (Small Business Development Centers, Service Corps of Retired Executives, Women's Business Ownership, Native American Affairs and Veterans Affairs) are currently incorporated into SBA's Office of Economic Development. On April 17, 1997, the Administrator notified the Congress of her intention to restructure the Office of Economic Development by separating the finance programs from the business assistance programs and establish two new organizations called the Office of Capital Access and the Office of Entrepreneurial Development. This proposal allows for increased attention to the need to expand access to the Agency's business education and training programs. The consolidation of business education and training programs also reflects the Agency's commitment to customer service, more efficient utilization of public/private partnerships and better integration of intermediary resource partners such as the SBDC's and SCORE.

In addition, each of SBA's program offices participated in the fiscal year 1998 budget process, which included the development of proposed reauthorization legislation submitted to the Congress on May 13, 1997. The proposed legislation includes program narratives submitted by the Offices of Women's Business Ownership (WBO), SBDC's, and SCORE, and contains specific reauthorization language for WBO, SBDC's and SCORE, as well as the remainder of SBA's programs.

#### SECTION 8(A), THE MINORITY SMALL BUSINESS PROGRAM AND 8(D), THE SMALL AND DISADVANTAGED BUSINESS PROGRAM

##### REAUTHORIZATION

*Question.* Does the SBA propose any modifications to the current utilization of SIC codes by qualified 8(a) and 8(d) small businesses seeking contracting opportunities?

Answer. As part of the Agency's review of the 8(a) program to streamline its regulations, we will evaluate current policy concerning the requirement that 8(a) firms have approved SIC codes prior to solicitation of Federal contracting opportunities. It is expected that the current standard will be amended to allow Program participants to market 8(a) contract opportunities in a manner consistent with the way that they market to other public sector agencies and private sector business.

*Question.* What possible ramifications would be seen if SIC code designation were conducted in a self-certification process as opposed to the current application process?

*Answer.* We do not envision any serious ramifications if SIC code designations are conducted as a self-certification process. SBA is responsible for the review and approval of any changes to an 8(a) firm's business plan. Currently, the addition of SIC codes to the business plan is considered to be such a change. Accordingly, SBA must now review and approve changes to a firm's SIC code profile.

While we will continue to review business plans annually, we plan to eliminate review and approval of specific SIC code changes and additions. If a Federal agency has accepted an 8(a) firm's assertion of performance capability under a certain SIC code, then the firm should have the opportunity to market and be awarded a contract for this work. In essence, by eliminating review of SIC code changes, bureaucratic procedures will be removed from the procurement process.

#### STREAMLINING

*Question.* Is the SBA currently attempting to streamline and/or standardize the various rules and regulations used by different agencies to establish eligibility for minority or disadvantaged business to participate in contract procurement? Please provide examples.

*Answer.* SBA is currently working with the Administration on developing a standardized government-wide certification process for Small Disadvantaged Businesses (SDB). When the drafting of these procedures has been completed, they will be published in the Federal Register as Proposed Rules for public comment.

*Question.* What efforts are currently being made within SBA to identify and eliminate the numerous "front companies" which are plaguing these programs?

*Answer.* In order to preclude entry of "front companies," into the 8(a) program, SBA carefully reviews the eligibility of firms applying for program participation. This is a rigorous process. In fact, the statute allows SBA 90 days to complete the application review and eligibility determination process. Further, once firms are in the program, SBA conducts thorough annual eligibility reviews to determine the appropriateness of continued participation in the program, or termination or graduation from it.

SDB status is currently based on a self-certification. In a basic sense, competition within the marketplace is intense, and tends to "weed out" companies through the SDB protest mechanism. SBA is working with the U.S. Department of Justice to establish a formal certification process for SDB status which will impose additional safeguards.

*Question.* Does the SBA support an effort to qualify small businesses in the 8(a) program which are not owned by a minority person but which hires a large percentage of minorities?

*Answer.* The 8(a) program is a business development program, which is targeted to individuals who are socially and economically disadvantaged. (While it is not a targeted employment program, it is noteworthy that many minority individuals are employed by 8(a) firms.) The program is predicated upon provision of business development opportunities to economically disadvantaged entrepreneurs, not upon the demographic composition of firms' employment rolls. A change in the basis upon which eligibility is determined would require legislation.

Accordingly, SBA determines the eligibility of small businesses based on whether they are at least 51 percent owned and controlled by individuals who are socially and economically disadvantaged, not by the ethnic makeup of the employees the firm hires. Socially disadvantaged individuals are those individuals who have been subjected to racial or ethnic prejudice or cultural bias because of their identities as members of groups without regard to their individual qualities.

In the absence of evidence to the contrary, the following individuals are presumed to be socially disadvantaged: Black Americans; Hispanic Americans; Native Americans; Asian Pacific Americans; and subcontinent Asian Americans. Individuals who are not members of a designated group must establish their individual social disadvantage by providing to SBA a clear and convincing case of social disadvantage.

Economically disadvantaged individuals are socially disadvantaged individuals who have been denied market access. Their ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged.

#### SUBSIDY RATE ON BUSINESS LOANS (CREDIT REFORM)

*Question.* Given that in the very recent past, policies were adopted that appeared to reduce the subsidy rate from 2.74 percent in fiscal year 1995 to 1.06 percent in

fiscal year 1996, only to have the subsidy estimate corrected upwards to 2.54 percent in fiscal year 1997 (with no policy changes). What confidence should we have that the anticipated subsidy reductions in the budget are attainable?

Answer. The estimation of the subsidy rate is a very complex process, requiring the analysis of several cash flow elements that occur simultaneously. The development of the loan performance database in 1995 has enabled the SBA to make great strides in analysis of loan performance data for the purposes of subsidy estimation. As a result of the inclusion of additional data and refinements in the subsidy models, incremental changes to the subsidy rates should continue to decline. The fiscal year 1997 subsidy rate is 2.54 percent compared to the current services rate for fiscal year 1998 of 2.32 percent. Further reductions to the subsidy rate in fiscal year 1998 are reliant on the policy changes presented in the budget including expansion of lenders' responsibilities in servicing and liquidating loans, deferral of claim payments and improved portfolio oversight. The fiscal year 1998 budget request includes \$18 million to strengthen oversight and monitoring.

Even with these improved analytical capabilities, SBA acknowledges there is still great potential for improvement. The requests for \$18 million, mentioned above, and \$1 million for sophisticated econometric analysis of loan performance are intended to further improve our analytical capabilities and enhance the precision with which subsidy estimates are made.

*Question.* To what extent has loan performance for the 1996 loan cohort improved compared to previous loan cohorts, since the changes in law designed to reduce the subsidy rate were implemented?

Answer. The average loan maturity for a 7(a) guaranteed loan is approximately 15 years. With only one year of actual data available for the 1996 cohort, assessment of overall performance of the 1996 cohort relative to older cohorts would not be meaningful. However, early analysis shows that performance, particularly purchase activity, in the first activity year of the 1996 cohort does demonstrate improvement over the first year's performance in most of the earlier cohorts included in the analysis (1986-1995).

#### SBA DISASTER LOAN PROGRAM

*Question.* You indicate that carryover funding from fiscal year 1997 will be used to fund SBA disaster loans. What is the estimated carryover funding available to SBA for this purpose?

Answer. Our fiscal year 1998 budget request assumed that \$174.3 million in budget authority would be available in fiscal year 1998. However, since fiscal year 1997 activity is now anticipated to be higher than the estimate used in the budget, we now estimate that only \$88.4 million will be available in fiscal year 1998.

*Question.* How much in disaster lending did SBA support in fiscal year 1996? How does that compare with the estimated level of disaster lending anticipated by SBA for the current fiscal year (1997)?

Answer. Total disaster loan approvals in fiscal year 1996 were \$988 million. After subsequent cancellations in fiscal year 1996, the figure was \$867 million for a total of \$243 million in budget authority. The fiscal year 1997 budget estimated disaster lending at \$752 million (10 year moving average, excluding the mega disaster of Northridge), which is approximately \$236 million less than the fiscal year 1996 disaster lending level. However, our recent estimates of fiscal year 1997 activity are that approvals will approximate \$1.1 billion, using \$220.2 million in budget authority.

*Question.* Does SBA's estimate of the available unobligated balances take into account the expected request for disaster loans to the winter flooding in California, Nevada and the Pacific Northwest, or do SBA's estimates pre-date these floods?

Answer. No. Although the estimate of the available unobligated balance from fiscal year 1997 in the President's budget was prepared prior to the Pacific Northwest floods, it is not based on a specific disaster, but was a product of using the 10 year moving average (less the mega-disaster of Northridge). However, disasters of the magnitude of the Pacific Northwest floods would be encompassed in the 10 year average.

*Question.* What is SBA's current estimate of the disaster loan requirements for these winter floods? Could you provide details of these estimates to the Subcommittee at the earliest possible date?

Answer. The current estimate of the disaster loan requirements for the Pacific Northwest winter floods is approximately \$150 million.

*Question.* The current spring flooding in the Midwest—in the States of Ohio, West Virginia, Kentucky, and Indiana—appear to be as devastating as the winter flooding

of the West. What are SBA's preliminary estimates of anticipated disaster lending needs in the Midwest?

Answer. As of May 29, 1997, we had approved more than \$153 million in disaster loans as a result of the spring flooding in Ohio, Kentucky, Illinois, Indiana, Tennessee and West Virginia. The filing period for physical disaster losses has closed in all states except Kentucky. The filing period for economic injury disaster loans remains open into December.

*Question.* Would you anticipate additional requirements from later spring flooding due to melting of the snowpack, or has SBA built this likelihood into its current budget estimate? Should Congress anticipate a budget amendment to provide additional disaster aid through SBA? When would you expect such a budget amendment to be submitted to Congress?

Answer. As of May 29, 1996, later spring flooding as a result of the winter ice pack had caused Presidential disaster declarations in South Dakota (4/7/97), North Dakota (4/7/97) and Minnesota (4/8/97). The filing periods for both physical losses and economic injury remain open. As of May 29, we had approved loans totaling \$89,703,100 in the three states and estimate that there will be additional approvals for these disasters of \$120-\$145 million.

At this time we do not anticipate submitting a fiscal year 1998 budget amendment for additional disaster lending requirements. The requested interest rate changes and contingency funds should enable SBA to handle disasters based on the 10 year moving average.

The President's fiscal year 1998 budget anticipates that \$90 million in subsidy budget authority will be needed to support disaster lending requirements of approximately \$785 million. With the recently projected available budget authority of \$88.4 million, plus recoveries of \$35 million would leave an unobligated balance of about \$33.6 million available for fiscal year 1999.

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#### QUESTIONS SUBMITTED BY SENATOR ERNEST F. HOLLINGS

##### OSHA'S DEFINITION OF SMALL BUSINESS

*Question.* Your Office of Advocacy sent a letter to OMB last year regarding OSHA's rulemaking for methylene chloride. The SBA Advocacy Office objected to OSHA's use of size standards for small businesses other than that specified by SBA. OSHA defines small business as having 20 employees or less while SBA uses 500 employees.

What size standard do you think OSHA should use in defining small business?

Has OSHA made any changes to its rule as a result of the Advocacy Office's objections?

Was SBA consulted by OSHA in the selection of the size cutoff?

What impact do you think the selection of this lower size cutoff would have on OSHA's analysis under the small business fairness legislation that Congress passed last year?

Answer. For purposes of the Regulatory Flexibility Act, all federal agencies are required to use SBA size definitions for small entities when performing a regulatory flexibility analysis. 5 U.S.C. §§601 et seq.; 13 C.F.R. 121. An agency may use an alternative definition for the analysis only after consultation with the Office of Advocacy. In comments to the Office of Management and Budget on OSHA's use of an alternative size definition for the methylene chloride rule, the Office of Advocacy pointed out that OSHA failed to use the size definition that is required by law, nor did it consult with the Office of Advocacy about an alternative size definition. OSHA did not use the appropriate procedure, and failed to perform a regulatory flexibility analysis for the entire universe of small businesses. After Advocacy's objections, OSHA expanded its analysis to include manufacturing firms with fewer than 100 employees. However, the correct SBA definition for this manufacturing sector is firms with fewer than 500 employees.

Using a size definition of less than 20 employees fails to recognize that "small business" is more than a micro-business and that the impact of this regulation, as well as others, can be equally or more burdensome to small firms with more than 20 employees.

A 1994 survey commissioned by the Office of Advocacy documented the regulatory and paperwork burdens on small business. Hopkins, A Survey of Regulatory Burden, June 1995. The report revealed that the costs of regulatory compliance place a disproportionate burden on small firms. In fact, firms with 20-49 employees may be the most burdened. They reported spending nearly 20 cents of every revenue dollar to pay for the paperwork and operating costs attributed to regulations. These

costs do not include the additional capital investments needed as result of regulation. Agencies argue that using a broader definition (i.e., the definition required by law) will hide the costs to micro-businesses because costs will be averaged. However, effective analyses will include the cost estimates for businesses of different sizes in order to identify the sectors with the most need for regulatory alternatives.

Using an inappropriate size definition creates two main problems. First, the use of micro-business sizes results in underestimates of the overall costs of this rule to small businesses. In addition, it completely leaves many small businesses out of the analysis. In this case, the alternative definitions used encompass a large portion of some industry sectors affected by this rule. Therefore, the use of an alternative size is less significant in some sectors (e.g., furniture strippers).

Second, and more importantly, OSHA is required to develop significant alternatives to the proposed rule to minimize the impact on small firms. By using a different size definition, the full impact and the need for alternatives were understated. In fact, the feasibility of implementing this rule for the small manufacturing, construction and industrial paint stripping industries is in question. By using the correct definition, OSHA should have recognized that the feasibility hurdle cuts across all small business sectors and the need for alternatives (besides phase-ins) are critical in some industries.

#### NEW ADMINISTRATOR'S GOALS

*Question.* Ms. Alvarez, you have an impressive background in finance and managing government financial institutions. Obviously, the budget before us today was put together largely before you joined SBA.

Could you tell us what your goals are for the agency? Are there specific programs that you intend to emphasize to change?

*Answer.* My vision for the SBA at this early point in my tenure has eight components. Five of these components embrace our traditional missions and three of these components represent new expanded roles.

First, the SBA must continue to provide access to credit for small businesses, in general, and for small businesses who are underserved by traditional lenders, specifically. My own view is that, especially in these times of severely constrained budgets, we need to do more to figure out exactly who is underserved by private, unsubsidized credit markets and then ascertain what are the best products and distribution systems to use to reach these populations. We already know that we need to redouble our efforts to increase lending to those populations—especially women business owners and minority-owned businesses—and those places—distressed urban neighborhoods and remote rural areas—which are underserved now. Providing access to credit is my number one priority.

I am also committed to exploring ways in which the SBA can increase private, unsubsidized lending to small businesses and lower its cost. For example, I have already begun to collect information on the securitization of small business loans. I believe that small business lending could expand, if we can develop standardization and other approaches that will allow for increased securitization of small business loans.

Second, I have embraced our mission to create and support entrepreneurs through our business education, counseling and development programs. The SBA support for the entrepreneurial spirit through programs like the SBDC's, the Women's Business Centers, the Business Information Centers, and the SCORE volunteers, are fundamental to our core mission. I am challenging the managers of these programs to open the doors wider to everyone in this society.

Third, I am very impressed with the role that the SBA plays in helping communities recover from disasters. We are the Disaster Bank, providing the downpayment on people's futures. I have seen the SBA at work helping the recovery. Our employees are doing so much right now for the people of North Dakota and Minnesota. Our hearts go out to our own SBA employees who have lost their homes.

The fourth part of our traditional mission that I have made my own is to help develop procurement opportunities for small businesses—especially small disadvantaged businesses. I am encouraged by the efforts to develop new avenues for procurement through technology and by efforts to reduce processing time by delegating 8(a) authorities to the procuring agencies. In my short tenure here, we have approved a new model for 8(a) that allow firms owned by community-based nonprofits to qualify. This approach, recently approved for a community development corporation in Washington, D.C., will allow firms in distressed communities to have an opportunity to compete for federal procurement dollars. And, with the CDC's involvement, we have the hope that the benefits from the procurement dollars will accrue to the residents of the surrounding community. In the area of overall federal pro-

curement, our challenge is to increase the number and amount of prime contracts that flow to small businesses and to increase small business access to subcontracts.

The government is falling short of a statutory goal of providing 5 percent of all federal procurement to small women-owned firms. Actual performance is at less than 2 percent. I am particularly interested in taking action to increase the federal government's performance with respect to the women's goal. It is not acceptable that the government does not meet this goal.

Fifth, I must be the spokesperson for small businesses in general. As a member of the President's Cabinet, I have the opportunity to bring small business issues to the highest levels of decision making in the federal government. It is my commitment to make sure that the voice of small business is heard.

On top of these five core missions, I would add the following:

One: I want to transform the SBA into a 21st century leading edge financial institution. A leading edge financial institution is one that relies heavily on technology to manage its lending and portfolio management activities. It employs fairly sophisticated techniques to identify and manage risk. The 21st century leading edge financial agency is a cost-effective and efficient organization that delivers credit to small businesses in a very short period of time. It is an organization that analyzes and develops new innovative credit products that serve to meet the various needs of its small business customers. And, it is an agency that operates in a safe and sound manner to protect the interests of the taxpayer.

Two: the SBA will take a leading role in the President's Welfare to Work initiative. President Clinton has promised the American people that he will end welfare as we know it. Last year, the President and the Congress passed landmark legislation that is the first step toward fulfilling the President's promise to the American people. The next step is to ensure that people are moved successfully from welfare to work. The SBA must take a leading role in this initiative because we represent the work side of the welfare to work equation. Small businesses create 75 percent of the new jobs in the economy. We must work to find ways to link employees coming off the welfare rolls with our small business employers. This will be a mammoth organizing task.

Finally, we have a challenge to help small businesses cope with and benefit from changes in the larger economy. The internationalization of capital markets, the rapid pace of change in technology and communications, the reconfiguration of major sectors of the economy such as utilities and financial services all pose risks for the small business sector.

Yet, if these changes are understood correctly and foreseen, nimble small businesses can take advantage of new markets and new opportunities. We have a mandate to help guide small businesses through these changes. Through a series of conferences over the next several years, I want to identify the most important of these macroeconomic trends for small businesses and organize conferences that will allow us to share knowledge on these important changes in the economy.

#### DISASTER LOAN PROGRAM

*Question.* As I understand it, your budget does not request additional credit appropriations for the SBA Disaster Loan Program because as of February 1, 1997, you had \$325 million in obligational authority which should subsidize \$1.6 billion in disaster loans. Is that correct?

*Answer.* The total amount of funds available for fiscal year 1997 was \$326 million which provides for \$1.6 billion in obligational authority. As of February 1, 1997 we had used \$63 million to make \$311 million in loans, leaving \$263 million to cover remaining fiscal year 1997 loan needs, administrative expenses and carryover funds to fiscal year 1998.

*Question.* What are the latest estimates for the flooding in California and the Ohio Valley, and the tornadoes in Arkansas and the Southeast?

*Answer.* Based on our current level of activity in the areas that you mentioned along with the recent flooding in the upper Midwest we estimate that total disaster loan demand for fiscal year 1997 will be about \$1.1 billion.

*Question.* Are you still confident that you will make it through fiscal year 1998 without new appropriations?

*Answer.* The fiscal year 1998 budget is based on a substantial carryover from fiscal year 1997, now estimated at \$88.4 million, plus \$35 million in recoveries. This amount would still provide approximately \$1.1 billion in loan authority if Congress adopts the proposal to increase the interest rates on disaster loans. If Congress rejects the proposal to increase interest rates, available loan authority for fiscal year 1998 would be \$526 million (\$259 million below the ten year average).

*Question.* However, administrative expenses appropriations for the Disaster Loan Program are requested to increase from \$108.5 million this year to \$173.2 million. Why?

*Answer.* The fiscal year 1997 appropriation of \$108.5 million included \$22 million from the emergency supplemental for disaster loan making, \$50.4 million to be transferred to regular salaries and expenses to cover indirect costs of the SBA, \$0.5 million to be transferred to the Office of Inspector General for disaster-related activities, \$22 million for disaster loan servicing activities, and the balance of \$13.6 million for additional disaster loan making activities. Therefore, the disaster loan making operation received \$35.6 million in direct fiscal year 1997 appropriations. This was supplemented by \$18.2 million carried forward from fiscal year 1996, plus \$50 million proposed to be reprogrammed from prior year loan recoveries in the disaster loan program account. The total amount available for the disaster loan making activities was, therefore, proposed to be \$103.8 million for fiscal year 1997. To date, only \$38.7 million has been approved for reprogramming from the disaster loan program account by the Congress, providing the disaster loan making activity \$92.5 million for fiscal year 1997.

For fiscal year 1998, there are no estimated carry forward funds available from fiscal year 1997, and there is no proposed reprogramming from the disaster loan program account. Therefore, funding for the disaster loan making activity is requested as a direct appropriation. This requested level is \$98.3 million. The requested level for disaster loan servicing activities is \$24.9 million. The requested level to be transferred to the regular salaries and expenses account to support the indirect activities is \$50 million. Therefore, the total fiscal year 1998 appropriation requirement is \$173.2 million.

*Question.* This year's budget proposes to increase the interest rates charged on SBA disaster loans from 4 percent to the cost to the Treasury borrowing rate plus one point. Could you explain the proposal and why Congress should agree?

*Answer.* First, the fiscal year 1998 proposal does not add one point to the cost of Treasury borrowing. Under current law the interest rates fluctuate according to statutory formulas; a lower rate, not to exceed four percent, is available to applicants without credit elsewhere; a higher rate, not to exceed eight percent, is charged to borrowers who have credit elsewhere. To reduce the subsidy cost of the disaster loan program, the budget proposes to increase the interest rate to borrowers without credit elsewhere to the cost of U.S. Treasury for securities of comparable maturity. For borrowers with access to credit elsewhere, the interest rate would be pegged above the Treasury rate. This change would reduce the subsidy in the program from 23.46 percent to 11.44 percent, enabling more loans to be made with the same amount of budget authority. An increase in the interest rate would also remove a disincentive for potential disaster victims to purchase insurance, which is the most desirable method of protection against the financial costs of physical disasters. Removing the caps and raising the interest rates to the cost of money to the government would encourage more reliance on insurance.

#### MBDA/SBA MINORITY ASSISTANCE

*Question.* For several years this Committee has been trying to eliminate duplication and get SBA and the Minority Business Development Agency in Commerce to work closer together. In fiscal year 1997 we fenced appropriations in both agencies for this purpose. Could you give us a status report on where efforts stand between the two agencies?

*Answer.* The report language for the fiscal year 1997 Omnibus Appropriations Act earmarked \$2 million in MBDA funding and \$1 million in SBA funding for projects jointly developed, implemented, and administered in conjunction between the two agencies. MBDA and SBA jointly developed a proposal that was submitted to the House and Senate Appropriations Subcommittees on Commerce, Justice and State in November 1996. The proposal would utilize the resources of both MBDA and SBA to provide business development assistance to three different categories of small disadvantaged businesses and medium sized businesses traditionally served by these two agencies.

The proposed project has been designed to bring to bear the resources, resource partners and programs of both agencies, without duplication of effort, for the benefit of (1) current eligible Section 8(a) Program participants in the developmental phase, (2) traditional MBDA clients and 8(a) participants about to transition out of the program, and (3) former 8(a) participants and other minority-owned businesses that are no longer small under SBA's size standards and regulations, but still benefit substantially from the transitional business development assistance programs of MBDA

for which they remain eligible. To date, we have not been given a response from Congress on the proposal.

#### SMALL BUSINESS DEVELOPMENT CENTERS

*Question.* Your budget proposes to reduce appropriations for Small Business Development Centers from \$73.5 million to \$57.5 million. Could you explain your proposal? Why is the Defense Transition Program zeroed out in the budget?

*Answer.* The SBA is attempting to increase the reliance of the SBDC program on the private sector and make the program more effective and self-sufficient by passing a portion of the costs of the program on to the clients. SBDC's charge fees for training (in 1996 SBDC's offset about \$4.8 million in training costs through fees) and its own clients value the program at about \$686 million. The Agency feels that those who use SBDC services should share some of the costs.

The Defense Economic Transition Initiative, which was initially funded in fiscal year 1995 for \$3.375 million and continued in fiscal year 1996 for \$2 million, has always been a Congressional initiative. Based on the limited resources of SBA, we believe the SBDC program could generate greater economic impact if it remains dedicated to its core responsibility of business management training and counseling. We have therefore not sought additional funding for this initiative.

#### SBA FIELD STRUCTURE

*Question.* For years, this Subcommittee has urged SBA to reduce and rationalize its field structure. In 1995, your predecessor, Phil Lader, proposed some changes but he was stopped by the House side. Have you taken a look at this issue? Have you assessed SBA's field structure?

*Answer.* The SBA is continuously looking at its field structure and how it fits with the Agency's mission. Over the last 2½ years, the district offices have been reduced in FTE's by 17 percent. Although the loan processing and servicing responsibilities are moving away from the district offices, lender oversight and training responsibilities are increasing. In addition, training and technical assistance required for small business constituents continue to increase.

#### LOAN GUARANTEE VOLUME

*Question.* It seems to me that SBA runs the 7(a) program like an entitlement. If there is demand for loans then the assumption is that the Government has to meet that demand. Do you agree? How do we know that Government funding is necessary? I mean, what incentive does any bank have to use its own funds when it knows that the Government will underwrite 80 percent of the risk?

*Answer.* SBA believes that it is appropriate to allow reasonable program growth within necessary budget constraints, and has requested a slight increase in 7(a) funding for fiscal year 1998 to reflect this growth. SBA has not, however, requested authority to broaden the category of small businesses for which it may guarantee loans. Therefore, for the past several years actual 7(a) loan approvals have remained relatively the same. The last time that SBA asked for supplemental appropriations to support the 7(a) program was during fiscal year 1993. When SBA ran short of appropriated funds again in fiscal year 1995, SBA imposed two measures, reducing gross loan size and eliminating refinancing, to dampen demand.

SBA is well aware that budget constraints make it necessary for every Federal agency to examine its programs to determine whether they represent an appropriate use of taxpayer dollars. You may be interested to know that no lender may ask for an SBA guaranty on a loan until it certifies that it could not make the loan under the same terms and conditions without the guaranty. Based on these certifications, and our feedback from small businesses in need of capital, we believe that the loans that SBA guarantees are important to the Nation's economy, and are not available in the commercial marketplace. SBA's guaranty allows lenders to extend credit when it could not normally do so by allowing longer maturities, less restrictive collateral requirements and loans larger than allowed under some lenders' practices. By selling the guaranteed portions of their loans on the secondary market, SBA's lending partners are also able to leverage their resources to have additional funds to lend to small businesses.

#### SUBCOMMITTEE RECESS

Senator GREGG. The subcommittee is recessed.

[Whereupon, at 2:21 p.m., Tuesday, March 11, the subcommittee was recessed, to reconvene at 10 a.m., Wednesday, March 12.]

**DEPARTMENTS OF COMMERCE, JUSTICE, AND  
STATE, THE JUDICIARY, AND RELATED  
AGENCIES APPROPRIATIONS FOR FISCAL  
YEAR 1998**

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**WEDNESDAY, MARCH 12, 1997**

U.S. SENATE,  
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,  
*Washington, DC.*

The subcommittee met at 9:57 a.m., in room SD-138, Dirksen Senate Office Building, Hon. Judd Gregg (chairman) presiding.

Present: Senators Gregg, Domenici, Hutchison, Hollings, Inouye, and Mikulski.

**DEPARTMENT OF JUSTICE**

**OFFICE OF THE ATTORNEY GENERAL**

**STATEMENT OF JANET RENO, ATTORNEY GENERAL**

**ACCOMPANIED BY:**

**STEPHEN R. COLGATE, ASSISTANT ATTORNEY GENERAL FOR ADMINISTRATION**

**MICHAEL J. ROPER, DEPUTY ASSISTANT ATTORNEY GENERAL, CONTROLLER**

**ADRIAN A. CURTIS, DIRECTOR, BUDGET STAFF**

**OPENING REMARKS**

Senator GREGG. I appreciate the Attorney General arriving early and the Senator from Hawaii is always early. We are very lucky to have such promptness, so we will start a few minutes early ourselves. I know the ranking member is going to be joining us in a few minutes. I know the Attorney General's time is in great demand and we appreciate her taking time out of her schedule to come and testify relative to her budget and other issues. We welcome you to the committee. It is always a pleasure to have your input and thoughts and ideas, and so I will open the floor to you. Let me first yield to the Senator from Hawaii to see if he has an opening statement.

Senator INOUE. No, Mr. Chairman.

Senator GREGG. I open the floor to the Attorney General.

**ATTORNEY GENERAL RENO'S OPENING REMARKS**

Ms. RENO. Chairman Gregg and Senator Inouye, thank you very much for this opportunity. I appreciate your strong support that you have consistently given the Department in our efforts to deal

with the crime problems in this country. During this time of fiscal constraint and steadily decreasing amounts of discretionary spending, please know that I recognize the tremendous effort that has been made by this subcommittee to carve out resources for the Department during the past 4 years. I know it is no easy task, and I appreciate the difficult choices that you have made.

#### PREPARED STATEMENT

For fiscal year 1998, we are seeking a budget that totals \$19.3 billion, an \$800 million, or 4.9 percent, increase in discretionary funding over 1997 levels. These new resources will be used primarily to escalate our fight against drugs, youth violence, terrorism, and illegal immigration. I appreciate your thoughtful approach to many issues, Mr. Chairman, and I appreciate the thoughtful way that you addressed the issues facing the Department, and I look forward to working with you and the entire subcommittee, and I would be happy to try to answer any questions.

[The statement follows:]

#### PREPARED STATEMENT OF JANET RENO

Mr. Chairman and Members of the Subcommittee: Good morning. Chairman Gregg, Senator Hollings, members of the Subcommittee, it is again a pleasure to appear before you to present the President's budget request for the Department of Justice. This Subcommittee, under both your leadership, has been tremendously supportive of our efforts at the Department, and I look forward to working closely with you in this, my fifth year.

For fiscal year 1998, the President is seeking a budget that totals \$19.3 billion for the Department of Justice, including \$5.2 billion in resources from the Violent Crime Reduction Trust Fund, and \$2 billion in funding through a variety of fees and fines.

During these times of continued fiscal constraint and reduced federal spending, the fiscal year 1998 budget request demonstrates the Administration's resolve to escalate our nation's fight against drugs, youth violence, terrorism, and illegal immigration, by providing the Department with an \$800 million or 4.9 percent increase in discretionary funding over 1997 levels.

#### MANAGEMENT INITIATIVES

If the budget I present to you today is approved, it will mark a 70 percent increase in Justice Department funding during my tenure as Attorney General. Please know that I recognize the tremendous efforts that have been made by this Committee to carve out the resources that you have made available to the Department of Justice during this time. I know it has been no easy task.

I know, too, of your deep concern over the management of these resources, and let me say that I share them. In fact, as a result of the hiring problems we had with border patrol officers and our shared concern over large-scale automation projects such as IAFIS and NCIS 2000, I instituted a management initiatives tracking process within the Department early last year. The process focuses on results. Like you, I am interested in what has been accomplished—how the Department's major organizations are implementing critical initiatives, including those supported by the budgets approved by this Committee.

Under the process I have in place, the components and I agree ahead of time on the subject areas to be tracked, as well as the measures and milestones to be used to demonstrate that a task is completed, on the right course, or needs corrective action. I am told this is the first time in over twenty years that such a management review process by senior level Department of Justice officials has been instituted. The components report on their status to me monthly, unless I ask for a more frequent update—as is the case with the INS and the FBI. We have regularly-scheduled face-to-face meetings to discuss progress and actions needed to keep the initiatives on track.

I will continue with this close management oversight to ensure these resources are properly used and that intended results are achieved. In addition, we need to strengthen our internal program monitoring and evaluation capabilities within each

agency. And, your recent approval of the INSpect reprogramming is one example of improvements we are attempting to make in this regard. Another is our request for increased resources to enhance the Office of the Inspector General. In the coming months, I hope we can work together to match audit and monitoring capabilities consistent with the Department's significant growth in funding.

I want to assure you that I am making every effort to use the resources provided by this Committee in the most efficient and cost-effective manner possible.

#### FISCAL YEAR 1998 REQUEST

##### FIGHTING CRIME AND YOUTH VIOLENCE

The budget I present to you today builds on the commitment made consistently by this Committee over the past four years to strengthen our fight against crime, particularly crimes of violence. Our efforts to work with communities and local police forces, through programs like Community Oriented Policing Services (COPS), are achieving positive results. Serious and violent crime dropped for the fifth year in a row in 1996, marking the longest period of decline in 25 years. And, the number of youths arrested for violent crime dropped by nearly 3 percent—the first decline in seven years.

##### NEW INITIATIVES

However, while overall crime rates are dropping, young people are increasingly the perpetrators and victims of some of society's most violent crimes. To address the continuing problem of youth violence, the budget before you seeks more than \$230 million in additional resources to target gangs and youth violence, hire new gang prosecutors, establish anti-truancy and anti-school violence programs, and develop new initiatives to get young people back on the right track after they have broken the law and before they stray too far.

These resources include \$100 million to establish the Prosecutorial Initiatives Targeting Gang Crime and Violent Juveniles Program, designed to provide grants directly to State and local prosecutors' offices for new local prosecutors and anti-gang initiatives designed to pursue, prosecute, and punish dangerous gang members for their crimes. Another \$75 million is requested for the "At-Risk Children Initiative." Grants will be made to local communities, through the States, for anti-truancy, school violence, and other, similar initiatives aimed at getting or keeping high risk juveniles on the track to success. And, \$50 million is requested to establish a Youth Violence Court Program that will provide funding for specialized, court-based activities—like juvenile gun and drug courts—to more effectively handle violent youthful offenders as they proceed through the justice system.

The changing profile of juvenile crime to a more violent and destructive phenomenon demands that we develop an aggressive, national strategy to effectively address it. The Anti-Gang and Youth Violence Act of 1997, which was transmitted to the Congress on February 25, contains that blueprint. I believe these new initiatives are the first step in developing a coordinated system to stem the rising tide of youth violence in America. I urge you to support them.

##### COMMUNITY-ORIENTED POLICING SERVICES [COPS]

Our budget request for fiscal year 1998 also includes \$1.4 billion to continue our effort to put even more police on the streets of communities throughout America. This funding will be used to hire approximately 17,000 additional police officers, bringing the total number of officers funded to nearly 80,000.

Police chiefs and sheriffs from across the country are telling us the good news—community policing is working. Just two weeks ago, the President and I traveled to Boston and saw firsthand what a difference community policing can make. We must maintain and strengthen the partnerships that we have built with local law enforcement.

And, we are requesting resources to enhance State and local law enforcement recruitment, retention, and education. The budget includes \$20 million each for the Police Corps program and for law enforcement scholarships to increase significantly the number of police officers with advanced education and training. The budget also includes \$5 million for police recruitment.

##### PROSECUTIONS IN THE DISTRICT OF COLUMBIA

An increase of \$16.6 million is included to provide enhanced support for the United States Attorney's work in prosecuting D.C. crime before the D.C. Superior Court. Specifically, additional attorney resources will be used to expand the community prosecution initiative, and to address the rising problem of domestic violence. Addi-

tional staff will also be used to target and remove violent gangs from the streets of the District, and to investigate and prosecute unsolved murder cases.

#### VIOLENCE AGAINST WOMEN

Violence against women continues to be a significant problem. To combat this crime, the fiscal year 1998 budget includes an increase of \$52 million—bringing State and local assistance under the 1994 Violence Against Women Act to \$249 million.

A coordinated, aggressive, and thoughtful criminal justice approach employing law enforcement and prosecution, coupled with victim services, can help break the cycle of violence and reduce subsequent incidents of domestic violence. The expansion of these programs will enable States to enhance their efforts to respond to domestic violence, sexual assault, and stalking, and further expand access to previously under-served American Indian and other minority populations.

#### VICTIM WITNESS ASSISTANCE

Responding to the growing concern of Congress and the Administration to safeguard the rights of crime victims, and to ensure the proper and considerate treatment of government witnesses, the Department is also requesting 134 additional victim-witness coordinators and advocates to be placed in United States Attorneys' offices throughout the Nation.

#### KEEPING CRIMINALS OFF THE STREET

For fiscal year 1998, the budget includes \$710 million—of which \$525 million is unearmarked—for State grants to build new prisons and jail cells under the Violent Offender Incarceration and Truth in Sentencing Grant programs. These monies can support the construction of up to 9,000 new prison beds to accommodate State prison populations.

Of the \$185 million in earmarked State prison monies, \$35 million is for the U.S. Marshals Service's Cooperative Agreement Program (CAP) to allow for the replacement of approximately 700 beds provided through agreements expiring by 1998, and to purchase additional beds to support the projected growth in the Federal unsentenced detention population. The remaining \$150 million is to augment the \$350 million provided for the State Criminal Alien Assistance Program (SCAAP)—bringing the total available to reimburse States for the costs of incarcerating criminal aliens to \$500 million in fiscal year 1998.

To address the steadily increasing federal inmate population, estimated to reach 116,762 in 1998, the budget includes program increases of \$144 million for the Federal Prison System. These resources will permit the activation of 1,152 new inmate beds in 1998, the construction of another 1,216 beds, and the conversion of dormitory style housing into single cells at two U.S. Penitentiaries.

These resources include \$3.6 million to support the activation of a medium security facility at the Federal Correctional Complex in Beaumont, Texas. It also includes \$120.6 million to build a high security facility with a minimum security camp at Castle Air Force Base, California, and \$16.7 million to convert dormitory style housing into single cells at the U.S. Penitentiaries at Lewisburg, Pennsylvania and Lompoc, California.

And finally, \$1.4 million is included to enhance the Bureau of Prison's ability to identify the background of inmates entering the Federal Prison System. This initiative will improve prison management by collecting information on security threat groups coming into BOP institutions and coordinating its intelligence gathering efforts with other law enforcement organizations.

#### FIGHTING DRUG TRAFFICKING AND DRUG ABUSE

Drug abuse and drug-related crime cost our society an estimated \$67 billion a year and destroy the lives and futures of our most precious resource—our children. The budget I present to you today seeks to step up our efforts to control the flow of illegal drugs with \$288 million in new resources targeted at Southwest border interdiction, methamphetamine production and distribution, investigation and prosecution of drug offenses, and successful drug treatment programs.

With these additional funds, the DEA will be able to hire 168 more agents to identify and assist in the prosecution of major Mexican drug trafficking organizations operating along the Southwest border; expand its anti-methamphetamine efforts; and continue implementing its five-year strategy that targets heroin trafficking within the United States.

For the FBI, 76 new agents will be added to expend the Department's Southwest Border Strategy, investigate public corruption along the border, and assist the DEA's Country Attaché office in Mexico. The United States Attorneys will hire 59 new Assistant U.S. Attorneys to work with the FBI and DEA in reducing the availability of illegal drugs by investigating and prosecuting internal and multi-jurisdictional drug trafficking organizations. They will work together to coordinate attacks against international drug organizations such as the Cali cartel.

During the past year, the Department has significantly disrupted the flow of cocaine trafficking along the Southwest border; identified and assisted in the destruction of four major clandestine laboratory sites in Colombia; and successfully prosecuted drug kingpin Juan Garcia Abrego. With your help in 1998, we can build on these successes.

To continue our efforts to break the cycle of drug abuse and crime, we have included \$45 million in additional funding for Drug Courts, bringing the program total of \$75 million to assist State and local governments in developing specialized drug courts for non-violent offenders. Another \$33 million is added to increase funding \$63 million for the Residential Substance Abuse Treatment of State Prisoners Program. In both instances, our research shows this kind of coercive intervention by the criminal justice system can force offenders to change behavior—with a real decline in recidivism being the result.

And, finally, you will note a change in the presentation of the budget request for the Interagency Crime Drug Enforcement Program that supports the Organized Crime Drug Enforcement Task Forces (OCDETF). Beginning in fiscal year 1998, funding for OCDETF organizations in the Department of Transportation and Treasury will be made available from appropriations provided directly to those two department. This change in funding source will have no effect on the oversight, management, and day-to-day operations of the OCDETF program. I will continue to provide policy, program, and budgetary direction to the regions, and to all of the participating organizations. The centralized management and coordination of Organized Crime Drug Enforcement Task Force activities is a critical component to the success of the program, and I will work to see that it is maintained.

#### FIGHTING TERRORISM AND INTERNATIONAL CRIME

While recent acts of terrorism appear to have been isolated incidents, we are seeking increased funding to ensure the safety and security of the Government and public from future violent acts.

We are seeking an increase of \$3.1 million and 30 positions for United States Attorneys to work with the FBI in the investigation and prosecution of domestic terrorism. The Anti-terrorism and Effective Death Penalty Act of 1996 broadened the tools available in terrorism cases. These United States Attorney resources will be critical in the Department's coordinated strategy to respond to incidents when they occur.

We are also requesting \$29.5 million for the Counterterrorism Fund in fiscal year 1998. As you know, the Fund is used to reimburse Justice agencies for costs incurred in support of preventing, investigating, or prosecuting domestic and/or international terrorism, and to finance reward payments. Further, an additional \$14.3 million is requested to support 23 FBI agents and 11 support personnel to enhance existing Legal Attaché offices and open eight new ones. Another \$3.1 million will allow the Criminal Division to increase its attorney presence overseas, expand its ability to critically analyze sensitive international law enforcement information coming into the Department, and augment international computer crime investigations and prosecutions. This funding will also allow the Department to hire staff as the United States assumes the Presidency of the G7/P8 in 1997.

The 1998 budget also includes \$17 million to continue the three State and local counterterrorism programs established in 1997 that provide grants to law enforcement agencies, as well as firefighters and emergency services personnel, to enhance their ability to respond to terrorist attacks. These monies also support grants for the development of technologies that can be used by State and local law enforcement to fight terrorism.

#### FIGHTING ILLEGAL IMMIGRATION

The fiscal year 1998 budget includes \$3.6 billion for the Immigration and Naturalization Services (INS)—a 13 percent increase in funding to strengthen the aggressive efforts we've made to date. These resources will enable the INS to further control illegal immigration by targeting resources to stop those who want to enter the United States illegally, detain and quickly remove those who slipped by, and make it harder for illegal immigrants to get jobs.

These increased resources will strengthen border enforcement in the South and West with 500 additional border patrol agents, exceeding the President's commitment to a Border Patrol staffing goal of 7,000 agents on the line. The funding will also support a program aimed at identifying criminal aliens in county jails as well as support INS' efforts to expand criminal alien record holdings into the FBI's National Crime Information Center (NCIC). And, resources will be used to enhance the existing Law Enforcement Support Center to respond to increased numbers of queries from State and local law enforcement agencies. To reduce the job magnet for illegal entry, the funding will enhance INS' interior enforcement initiative in states with high illegal immigrant populations, and increase funding to verify the employment eligibility of newly-hired non-citizens.

Last year's immigration bill requires mandatory incarceration of aliens involved in crime, pending deportation. The budget request will support 1,864 more jail beds in 1998. And, an additional 1,132 bed spaces will be available using resources in the new detention account, bringing total detention bedspace to over 15,000 in 1998. Specifically, the INS will be activating new beds in the Buffalo (NY) Service Processing Center, the Krome (Miami, FL) Service Processing Center, and in the San Diego, CA area.

#### RESTORING CRITICAL INFRASTRUCTURE

Once again, the budget before you seeks to address the critical infrastructure needs fundamental to the effective enforcement of our nation's laws. Without the proper tools to get the job done, current—let alone additional—attorneys, agents, and inspectors will be less efficient and less effective in performing their duties.

For the INS, we are seeking \$76.2 million for infrastructure improvements. These include resources to address the problem of aging and overcrowded Border Patrol stations along the Southwest border, and additional detention bedspace. These funds will also be used to establish a construction management program, strengthen INS' records infrastructure, enhance information and analytical services, and provide advanced training for INS officers.

For the FBI, the budget includes \$51.6 million to improve its core infrastructure. This funding includes items such as renovation of space at the J. Edgar Hoover Building; five-year security investigations of all FBI employees and contract personnel with access to classified materials and facilities; expansion and renovation of the Los Angeles Field Office; and equipment to upgrade the capabilities of the FBI's National Backstopping Program so critical to FBI undercover operations.

Another \$36.9 million is requested for the DEA. These funds will be used to purchase and install advanced computer equipment for the establishment of a secure, centralized computer network that will be used in conjunction with the FBI and other Department components in drug investigations. The funding will also support a multi-year project to reconstruct at least five deteriorating DEA field laboratory facilities.

#### GENERAL LEGAL ACTIVITIES

As I have stressed in past testimony before this Committee, I am deeply concerned that our litigating divisions have sufficient resources to cope with national problems that need a coordinated, expert approach, such as the defense of federal statutes against legal challenges. With the exception of the Criminal Division, the Department's litigating components have not had an increase to cover inflation for the past three years—yet their workload has continued to grow. The 1998 budget request includes funding to address this shortfall.

Specifically, it will allow us to pursue illegal tax protester groups, to better enforce the Americans with Disabilities Act, and to prosecute hate crimes; to develop strategies for interdicting dangerous pollutants, to challenge anti-trust violations, to defend multi-billion dollar claims against the Treasury based on cases such as *Winstar*, address other increasing defensive litigation workload, and to speed the automation of our Freedom of Information processing system.

#### CONCLUSION

Mr. Chairman, I have attempted to outline for you today, the principal focus of the fiscal year 1998 budget request for the Department of Justice. But, our mission is so vast and varied, I have not been able to touch on it at all.

I appreciate the support you've given to me, and to the Department of Justice during the past four years. We've made tremendous progress in fighting drugs, violent crime, terrorism, and illegal immigration. And now, with your continued support, I am certain we can build on the progress we've made and rid America of the violence that has become all too commonplace.

Thank you. I look forward to answering any questions you might have.

Senator GREGG. That may be the briefest opening statement that any witness has ever made before this committee. It is much appreciated. It is in the New England tradition. I appreciate it. Well, I know that the Senator from Hawaii has a Defense Appropriations Subcommittee meeting going on at the same time, so I will yield to the Senator from Hawaii to ask such questions as he may have because I know he has to get going.

#### JUVENILE CRIME

Senator INOUE. Thank you very much, Mr. Chairman. I do have a few questions. General Reno, the aspect of crime that concerns, I believe, all Americans would be juvenile crime. It has been not only frustrating for many of us, but it has been frightening at the level of brutality and the increase. The administration has introduced a measure on juvenile crime. Can you tell us some of the key points in this measure?

Ms. RENO. What we have tried to do is build on what we have seen as successful in communities across this Nation. We have seen the COPS program provide officers for the streets who can relate to young people and have had tremendous effect in community policing initiatives across the country. Congress and the administration have provided more moneys for correctional facilities, but we are also trying to focus on this initiative with a balanced approach that also provides to prosecutors in this first year \$100 million to develop initiatives focused on youth violence, tailored for the problem in that particular community.

We also provide \$50 million for a focused attempt by courts to deal with the problem of youth violence. I have worked with the State chief justices conference on a regular basis over these last 2 years to identify how the courts can participate in this initiative since, as you may well know if you talk to a juvenile court judge, they say they are just absolutely overwhelmed by the caseload, and do not feel that they can do justice to the particular youth appearing before them. So this will give prosecutors and courts the opportunity to participate in the juvenile justice system in a more complete way.

What the initiative tries to do is to provide a balance focused on the serious youthful offenders, provide for punishment that is firm, fair, and fits the crime, provide for aftercare when they return to the community to give them a chance of success, but it also provides for an intervention program such as moneys for youth drug courts or youth gun courts that can make a significant difference. We provide \$75 million in this budget, a \$50 million increase, for at-risk children through initiatives such as mentoring, truancy prevention, conflict resolution programs, that can give children a chance for a strong and positive future. So it is a balanced approach. Let us get tough on those serious offenders, but let us provide opportunities for programs that keep our kids out of trouble in the first place.

## CRIME PREVENTION

Senator INOUE. So am I to gather that from the debate on crime, you opt out more for prevention than for enforcement?

Ms. RENO. No; as I was clear to point out, we are providing enforcement initiatives through prosecution initiatives and through the court's initiatives. We are trying to provide a balanced approach, Senator, that recognizes that too often there is not an adequate punishment, an adequate followup, for the serious offender, but at the same time we have seen prevention programs that are working across this country, that are keeping kids out of trouble, that are reducing the crime, where we bring community initiatives together such as mentoring and truancy prevention, and programs where community probation officers ride with community police officers to keep tabs on the youngsters in the neighborhood who are in that probation caseload. There is so much that is happening, and this is a focus to enable it to happen across this Nation.

## SUCCESSFUL JUVENILE CRIME PREVENTION PROGRAMS

Senator INOUE. The State of Hawaii, like all other States and communities, has its own juvenile crime program. So I would assume that there are literally hundreds, if not thousands, of different programs in all of our communities, and I would assume that many are successful and many are not. How can we get hold of programs that are successful so my community in Hawaii can try it out?

Ms. RENO. What we have tried to do is to identify the cities that have been successful, the communities that have been successful, in reducing crime. Boston is a classic example. They had a significant youth murder rate that has declined so that there were no youth murders in a significant period of time in this last year. What we did was put together a booklet of the programs that have come together in Boston to make a difference. We worked with the police commissioner, and we are distributing that information across the country, but in this initiative, we are also providing moneys for evaluation, for research, and for dissemination to the entire country of programs that are working.

You are correct when you point out that there are different programs and some work, some do not. Some could work if there was just another piece that could fit into the puzzle to create a whole approach that can make a difference for a child. It does no good to have a marvelous school program, and then have no afternoon or evening programs. So in the Department of Education's budget, there is a budget request for \$50 million for after-school and evening programs that can, I think, make a significant difference for our children.

Senator INOUE. General, I thank you very much. Mr. Chairman, I have several other questions which I hope I can submit.

Senator GREGG. Absolutely.

Senator INOUE. So I thank you very much.

Ms. RENO. Thank you, Senator.

## FBI/WHITE HOUSE CONFRONTATION

Senator GREGG. First, welcome to the ranking member. We did forego opening statements, and the Attorney General basically did as well.

Senator HOLLINGS. Very good.

Senator GREGG. We have gotten right into questions. There are a couple of issues which I think we have to address preliminarily here because they are of such public significance. I had mentioned that we would be addressing them to you so that I did not feel that we were being unfair in bringing these up, but I would have presumed that you would have anticipated we would have done this.

The most significant, obviously from our standpoint as a committee, is this confrontation—I do not think there is any other way to describe it—between the White House and the FBI. The statement of the White House was initially, if I can review the facts, that the two lower-level or mid-level people within the National Security Council [NSC] had been briefed by the FBI, on the potential for influence by a foreign government being asserted by using campaign contributions. That same briefing, as I understand it, was given to at least six Members of the Senate. When this was disclosed, the White House put out a statement that the FBI had advised these NSC individuals not to communicate this information with the President.

The FBI then put out a statement, a portion of which I will read: “the FBI placed no restrictions whatsoever on the dissemination up the chain of command at the NSC on any information provided to the NSC senior staff”—I said mid-level; they were senior; I am sorry—“senior staff by the FBI during the June 3, 1996, briefing.” So the FBI specifically contradicted the public statement of the White House.

Today and since that time, there have been some mitigating statements, not coming out of the FBI but coming out of the White House, and at least through unidentified sources, coming out of the Justice Department. I will quote from a New York Times article today that appeared in the Nation section under Money and Politics entitled “Justice Department Rebukes FBI for Statements.” One of the paragraphs says, “Another Justice Department official speaking on the condition of anonymity criticized the Bureau for the blunt public statement on Monday.”

There are a number of very significant issues that are raised by this obviously. To quote the Washington Post, which is not generally my inclination, in the first paragraph of their editorial today, “It is a pretty chilling spectacle when you have, as you did on Monday, the FBI, the Nation’s premier Federal law enforcement agency, flatly contradicting the White House, the President himself, on a matter of some considerable importance to both. But there were things out of the ordinary here.” This is further down. “But there were things out of the ordinary here, and there continue to be,” is the essential summary of the editorial.

So it is not necessarily my own view, but the view, I think, of a number of people that this spectacle of the FBI and the White House contradicting each other is very significant and creates major concerns. The concerns which I wish to address are the fol-

lowing, and which I would appreciate your commenting on. First, have you taken a look at the situation, which I am sure you have, and what is your determination of what happened? Second, does it not put the Justice Department in an untenable position to have the chief investigative arm of the Justice Department, which is in the process of pursuing an internal Justice Department investigation of campaign funding, and specifically, we understand this funding issue as the alleged influence of another government or an attempt by another government to influence our system through campaign funding. Does that not put the Justice Department in an untenable position to have its investigative arm in a public disagreement with the White House? Public disagreement may have been mitigated slightly, but is clearly still there. Does it not put the Justice Department in a situation where pursuit of an internal investigation through its internal offices as versus through an independent office of an independent prosecutor creates at least a perception of a conflict of interest?

Ms. RENO. Yes; I have looked into it, and the FBI agents who provided the briefing state that they placed no restriction on the dissemination of the information up the chain of command at the NSC, as you have pointed out. I have been advised that the NSC staff members state that they were asked to curtail further dissemination, and that the notes of the briefing of at least one reflect or suggest something to that effect. What I think happened, but we are continuing to review it, is that they pointed out that the matter was sensitive and should be handled carefully, and I think there was a miscommunication with respect to that and a misunderstanding of just what was intended. I think the White House has further clarified that by an additional statement.

With respect to an issue of an independent counsel, this does not have anything to do with the campaign finance and does not in any way trigger the independent counsel statute.

#### FUNDRAISING

Senator GREGG. Well, that is technically true. I guess my concern, however, is—and I will couple this with another question—that recently both your Department and yourself made statements reflecting the definition of what would be an illegal act within the White House relative to raising funds. At the same time, of course, the Department is investigating whether or not illegal acts occurred at the White House relative to raising funds, at least one presumes they are as part of this internal review. Does that create a perception of conflict or inconsistency as to the ability to pursue an independent investigation when you have the Department which is doing the investigation defining the law which has not yet been defined judicially and which is in issue? In addition to that, is there a conflict when the Department which has an investigative arm that does the investigation is in a confrontation with the White House? My question goes more to the issue of whether or not there is a perception here that the Justice Department is putting itself in a position where the perception of fairness, the perception of objectivity, and the perception that there might be a conflict of interest are all raised as to whether they are appropriately being followed?

Ms. RENO. First of all, I have made no statement with respect to the definition of what is legal and illegal, and I have specifically said that we are continuing to review every allegation, pursue every matter, take every investigative step possible, and that it is my policy not to make such determinations until the investigation is complete so that we do not prejudge it. With respect to the second issue, as to whether there is an appearance of conflict, Congress has spelled out what that appearance would be in terms of high public officials at the White House or otherwise and has defined those people. It recognized by that statute that the Department of Justice as an institution could carry forward an investigation without triggering that statute, and at this point, I do not think that I have the conflict that would justify triggering the statute. What I have said was that at any moment that specific and credible evidence developed that would trigger the statute, I will be the first to request the appointment.

Senator GREGG. You make the decision as to when the independent counsel should be triggered, which is appropriate under the law. The question is, however, whether if in not making that decision but yet having all these different ebbs and flows of confrontation going on, we are not creating an atmosphere where people are going to say that no matter what the conclusion the Justice Department reaches, it was not independent. The fact that the Justice Department was fighting with the White House over what the disclosure was, what they told the President, and what was said to the NSC people as to what could be said supports this conclusion. There was a clear implication that there was a statement from the Justice Department—I believe it was from yourself also—that the law does not apply to soft money and, therefore, there may not be an issue here. The question becomes one of, when does it become counterproductive for the Justice Department to hold this in-house when there is so much ebb and flow that involves the Justice Department itself in the substance of the issues?

Ms. RENO. The Justice Department has considered these issues through both Democratic and Republican administrations. Career lawyers have defined and have reviewed issues. Again, I have made no statement as to what is legal and illegal, and I refrain from doing that until the investigation is complete, and we have all the evidence. There is always an ebb and a flow in an investigation. Again, Congress has defined the area in which we should trigger the statute, and if I triggered it without doing so according to the specific provisions of the statute, I would have to do so otherwise, and the last time I did that and appointed a special counsel on my own, everybody said he could not be independent because I appointed him.

Senator GREGG. Well, every counsel is going to be appointed by you, I presume, under the law.

Ms. RENO. No; under the statute, as Congress has defined it, the independent counsel is appointed by a special division of the court.

#### FBI/WHITE HOUSE CONFRONTATION

Senator GREGG. Oh, I am corrected then. Well, how do we get over this hurdle, though, of the FBI and the White House in what appears to be a very clear disagreement? There is the implication

that the White House is trying to blame the FBI, or that the FBI, in the alternative, is running as a rogue agency because that is what it would be if its statement was inaccurate. These are very significant public policy concerns. How do we get over that issue?

Ms. RENO. I think the most important thing for us to do is to look at exactly what happened, consider the statements made by the White House and the FBI and do everything we can to make sure that briefings like this in the future are done with precision and that there is no misunderstanding in the communication.

Senator GREGG. Well, I will hold on to the rest of my questions. Senator Hollings.

Senator HOLLINGS. Along that same line, Madam Attorney General, I think there has been some miscommunication. We all know in the Government that there will be various efforts not only by China but other nations to penetrate and to find information out. I thought it sort of looked in a way questionable when the President of the United States said he was not told about China trying to get in. He did not need to be told. The President ought to know that as Commander in Chief. But, otherwise, I go back to experience. When it really counted, I was Governor when we apprehended one of Martin Luther King's troops, and we got a call from the FBI and said you got to let him go because we have got a wiretap on Martin Luther King, and the White House was denying that very fact at the time. They said "No, we do not have any wiretaps on Martin Luther King." And, in fact, I have read books and histories of the situation which confirm that the FBI was doing exactly that.

I happen to know from my own experience. We were contacted in South Carolina and told to let the gentleman go because in order to really pursue the case, we had to reveal the fact that the FBI had a tap on Martin Luther King. So that was significant. This here of a briefing received by this office or that office and say keep it secure happens all the time. What really bothers me, for example, is if they will come with an FBI report on an appointee, for example, a Senator, they will sit with you and say you cannot take any notes, do not say anything, and give the FBI back the report. Yet over at the White House they can pile up the reports and keep them.

So I do not think the FBI is a rogue agency. I think it is a miscommunication, and I do not think it is a significant miscommunication because—everybody wake up—we have been trying—I looked at Herblock's cartoon this morning—we have been trying to influence the domestic conduct of affairs in the People's Republic of China for a long time. And they will continue to try to influence domestic decisions with respect to MFN and otherwise here in the United States. We all know it. And we do not have to get—do you know of any evidence—rather than ask, I am not asking about the evidence—but do you know of any evidence given any of us here that actually China is trying to get involved in our elections? I listened closely to Senator Feinstein. She never was given anything. She just said we understand, but I would think that we ought to have some kind of evidence rather than making a mountain out of a molehill here unless we do have some evidence of that kind. Do you know of any evidence?

Ms. RENO. First of all, with respect to a rogue, if somebody is a rogue in this process, let me just point out both to the chairman and to you that the FBI was very careful to brief. It briefed both committees of the House and the Senate. There is nothing rogue about it. They briefed the administration, and the administration in the statement it makes notes that the NSC staffers elected not to brief their superiors about the information although they recognized the NSC procedures would have permitted them to do so. So I do not think anybody is being a rogue. We are trying to make sure that we fulfill our responsibilities for national security and foreign policy.

Senator GREGG. Well, that, of course, was my point, and in the alternative, I was pointing out that if the White House is right, the FBI would be deemed a rogue agency. I do not think the White House was right. I think the FBI was right. The White House was wrong in their assessment of what the FBI told them, or at least in the way they reported it to be told.

Ms. RENO. OK.

Senator GREGG. I am not implying that the FBI is a rogue agency. It is just the opposite.

Ms. RENO. I am delighted to hear that, and I think what that then points to clearly is that we must make sure that there is clear communication, but with respect to the additional question, Senator, I do not think it would be appropriate for me to discuss evidence other than as through the briefings that we have made.

Senator HOLLINGS. Well, I understand over on the House side—I was watching those hearings, and Chairman Livingston and Chairman Rogers were giving you the very dickens for being too supportive of the White House. Now you come over to this side and you get the dickens for, by gosh, challenging the White House on what the fact is.

Ms. RENO. Well, I got the dickens from them about everything the other day, sir. [Laughter.]

#### CAMPAIGN FINANCE

Senator HOLLINGS. Can you tell me, General Reno, on a show of the public, that the Justice Department has taken all the appropriate steps with respect to these violations of campaign finance laws?

Ms. RENO. Senator, what we have done from the first is to make sure that the public integrity section has the staff it needs to pursue every lead; that the FBI and the public integrity section have all the resources they need to properly pursue this. I have directed them to pursue every lead, to let me know if they need additional resources, but as importantly I have told them that if at any point they develop specific and credible evidence that would trigger the statute, that it would be, I want them to let me know immediately so that I can take appropriate steps.

Senator GREGG. May I ask a followup question?

Senator HOLLINGS. Yes, surely.

Senator GREGG. Can you tell me what the criterion is that you deem triggers the statute? I think that would clarify the record.

Ms. RENO. There are two sections. But both sections in order to trigger it require specific and credible evidence of a violation of law

either by covered parties or in situations where there is a political, personal, or financial conflict, but both require specific and credible evidence.

Senator GREGG. Thank you.

Senator HOLLINGS. And have the campaign finance laws been broken?

Ms. RENO. I will not comment on that, Senator, until the investigation is complete. I do not want to say anything in regards to the pending investigation. What I can say is at this point I have not received from the public integrity section, from the career lawyers who have handled this issue through Republican and Democratic administrations, that they have specific and credible evidence of a violation of law by a covered person or person with whom I would have a conflict.

#### BORDER PATROL

Senator HOLLINGS. Very good. With respect to the Border Patrol school that we instituted at the abandoned Charleston naval base, let me state for the record that Ron Myers and the rest of the agents in charge are really can-do folks that are working and making a fine effort. What happens is we will turn out some 1,430 additional Border Patrol agents this year, but then I see over on Treasury that they are including \$14 million for duplicative facilities at the Federal Law Enforcement Training Center there at Glynco, GA. They have only been operating in Charleston, as you well know, 6 months. I wish you would look at that and get some coordination because that let us use what we have put money into to fix up and got a going school and everything else before we start rebuilding in Georgia if we want to save the money. Ultimately, I guess it will all go back to Glynco someday. This is not a permanent facility, but it seemed to be a waste if we are going to start after having refurbished the buildings and class space and otherwise to then go and put \$14 million over there for new buildings for the same effort down in Georgia.

Ms. RENO. Senator, you made a comment about a specific word, and it was certainly true. Can-do. They really performed and delivered. That facility has been absolutely indispensable in our efforts to put well-trained Border Patrol agents in the field, and I think it will continue to be. The Treasury Department would not have asked for the money when it is ultimately phased out. That would be a DOJ expense. My understanding is that Treasury has additional plans that are not related to Charleston for the Glynco facility. But we will certainly work with that because that facility has been indispensable for our efforts, and we just appreciate what has been done there.

#### NATIONAL ADVOCACY CENTER

Senator HOLLINGS. I have colleagues ask about that \$8.3 million budget item for the National Advocacy Center that will open April of next year. Now, that ought to be explained by way of record here. As the Attorney General, you are a former local prosecutor. Can you tell us, this center was the one that Attorney General William French Smith recommended after he had a task force look at the violent crime problem back then. They made this recommenda-

tion back in 1981, and we are just now about to make it a reality. I think something ought to be stated on the record with respect to that \$8.3 million, the Advocacy Center and its significance.

Ms. RENO. My experience as a prosecutor is that there is nothing more important other than hiring the best people you can, nothing more important than training, and what I have seen in my experience as a local prosecutor, and now as Attorney General, is that it is very important to train Federal prosecutors with State and local prosecutors so that we appreciate the spirit of federalism, but that we learn how to work together, provide for opportunities where we can know what is needed in both courts to get a conviction. This Advocacy Center can be so extraordinarily important. As you point out, it was developed in response to a task force, a bipartisan task force, cochaired, as I understand it, by former Attorney General Griffin Bell and former Governor of Illinois, Governor Thompson, and they made the recommendation that we also provide not only the capacity to train Federal prosecutors, but that we provide the capacity to train them along with State and local prosecutors, and I think that can be so very important.

#### STAFFING

Senator HOLLINGS. I understand, Madam Attorney General, that the Department of Justice is now proposing an additional 55 attorneys for criminal prosecutions here in the District. What has been a particular interest to me is that we really put the effort here on 14th Street and within the city itself. I say that by way of comparison of your DEA effort, say, down in Santa Cruz, Bolivia. You got a big component, and they will give you a briefing like Vietnam. We are getting them; we got them here; we got them there; we go down the river, and everything else of that kind. It is just outrageous nonsense. You go up to La Paz, the capital, and people are walking around the streets chewing coca. They give you a particular area in Bolivia that is bigger than the State of Georgia that is off limits. Growing coca is illegal there. I want to bring those DEA agents home and put them up on the streets and clean this thing up so that the drug smugglers cannot just walk out, drugged up, and just shoot the policemen at will. We are just not making an effort in this country. We are running all around the world in a total wasteful fashion. Can you comment on that?

Ms. RENO. Yes, sir; I think what we are trying to do is a very balanced approach. Senator Gregg can tell you about the U.S. Attorney's Office in New Hampshire in terms of working with State and local officials, both prosecutors and law enforcement agents, providing for prosecutions in Federal court when it is appropriate, when everybody agrees, and the impact that that has had in New Hampshire. In other areas where we have seen increased violence, the DEA MET teams have moved in, and worked with State and local law enforcement. They have not wanted the credit. They have not claimed the turf. They said how can we help you in exchange of information? And I get letter after letter from police chiefs in small or large cities that say what a difference it has made.

We have developed an antiviolence initiative focused on how we can do this in a comprehensive way across the country, and we are dedicated to that. The District of Columbia obviously has signifi-

cant crime problems, and under the leadership of Eric Holder, who has been a splendid U.S. attorney, we have addressed that, but one of the points that we have got to remember with the District of Columbia, when we fund that office, we are not only funding a Federal prosecutor's office, but we are funding a State prosecutor's office as well. And we must be able to ensure that Mr. Holder has the resources that the best funded State prosecutors have across the country.

Senator HOLLINGS. Not only prosecuting attorneys but DEA agents out there on the streets.

Ms. RENO. Well, it will also help, if you notice this morning, that the FBI has committed agents to the issue, and this is important. What we discover is that crime goes back and forth across the District line with Prince Georges County, and so we have tried to work with all the officials involved to use the Federal jurisdiction to assist, and I think you will note in the paper this morning, the commitment of additional Federal agents to that effort.

Senator HOLLINGS. I will yield. Thank you, Mr. Chairman. What happens, though, I can just see it if we could take the DEA agents down there in Bolivia and just move them up here on 14th Street, running up and down, we could run all of that crowd over into Virginia and into Maryland, and then you would see this Congress really act on crime. I can tell you that right now. They are not around town. I have lived here now for 30 years in the city, and it gets worse and worse. Now the police force is asking. Do not be so considerate about coordinating with the local people. The local people say "Soeey, pig, ya'll come, hurry, we need help," because it is just unforgivable that they can walk out and just shoot the officers in the cars at will.

Ms. RENO. Senator, what is happening because of comprehensive efforts across the country with Federal agencies and prosecutors working with State and locals, what is happening with the crime, the COPS program, special initiatives such as in New Hampshire, is that we have seen crime go down, but we cannot rest on those laurels. We have got to continue an effort in a balanced way, not only within our borders but across the borders. Senator Hutchison knows along the Southwest border the problems associated with violence. That is not going to be solved just by having DEA agents or Border Patrol agents there because they can go back across the border. We have got to have an approach that says there is no place to hide, and we have got to work on an international scope as well. And I know the Senator is very concerned about that area.

Senator HOLLINGS. Thank you, Mr. Chairman.

Senator GREGG. Senator Hutchison.

#### MC ALLEN, TX/MEXICO BORDER

Senator HUTCHISON. Well, that was a perfect opening for some of my concerns. Let me start with that one. Federal data shows that the McAllen sector in Texas is quickly overtaking the San Diego sector in terms of numbers of undocumented illegal aliens apprehended. Last year McAllen led the Nation in marijuana seizures and was second in cocaine finds. In November 1996, McAllen had only 1,400 fewer illegal alien apprehensions than San Diego. Nevertheless, the number of Border Patrol agents in 1996 in San

Diego was 1,955. McAllen had 501. Now, the administration was to have assigned 1,000 new agents in 1997. As of now, only about 700 have been assigned with the remaining 300 to be assigned this spring. In the first 1997 assignment, McAllen received 159 new agents, San Diego received 201. It seems that the imbalance between Texas and California in the distribution of the added Border Patrol agents is not balanced. Are you going to take steps to address that in your next assignment?

Ms. RENO. What we are trying to do in all of this is to make sure that we respond. I have long said that we have got to watch McAllen like a hawk because I have, as you know, been from one end of the border to the other and realize the pressures that are brought to bear. What I would like to do is perhaps come visit with you, look at the figures, see what we can do, but I want to provide as an effective response along the entire border with the resources we have to do the job as possible and will continue to address that issue.

Senator HUTCHISON. I would like for us to be able to talk about this because I have communicated with your office for the last 2 years on the imbalance. As you know, Texas has 1,200 miles of border with Mexico. California has roughly 125. And much of our problem is in the uninhabited areas, the big ranches. Those people are under siege, Ms. Reno. They are unarmed. They feel like prisoners in their own home. They can walk out into their yard and meet a drug kingpin with an AK-47. Now we have got a real problem, and our resources are, I think, very imbalanced. I along with Senator Gramm and others worked very hard to increase the number of Border Patrol agents. I am concerned that only 500 additional agents have been requested by the administration in fiscal year 1998, whereas the Illegal Immigration Reform Responsibility Act of 1996 requires that you increase the number of Border Patrol agents by 1,000, and yet the administration is only asking for 500 in 1998. I am very concerned about this. Why are you not asking for the full 1,000? I will ask that question.

Ms. RENO. I have regularly explained to the committee my concern about hiring too fast. As you look at police departments across the country, those that hire too fast are without adequate supervision because the ratio of supervisor to new recruit is so low. It is important that we hire in an orderly way. We asked the IACP to conduct a study on Border Patrol growth in 1995. They cautioned that a work force with too many inexperienced officers and supervisors could pose serious risk. The study looked at 3-year growth options and concluded that overall growth in supervisory and officer ranks of 41 percent over 3 years would threaten operational effectiveness.

Some of these threats included: too many inexperienced supervisors overseeing a large number of new agents, threats to the organization's systems, and the threat of possible improper behavior. The Border Patrol's recent growth in agents has resulted in 43 percent of the current work force having less than 3 years' experience and 37 percent having less than 2 years' experience. This growth exceeds the levels cautioned by the IACP study, and that is the basis for our recommendation.

Senator HUTCHISON. Of only 500 new agents?

Ms. RENO. That is correct.

Senator HUTCHISON. Well, I am in a real dilemma here because I worked very hard to get you the equipment you need, the Border Patrol agents you need, and yet my State is under siege, and the balance of assets is, I think, very, very unfair and not tuned in to the realities.

Ms. RENO. Well, what I would appreciate—

Senator HUTCHISON. Let me just reiterate. We have one-third of the number of Border Patrol agents in McAllen as you do in San Diego, and you continue to increase the number in San Diego at a greater rate.

Ms. RENO. But the number of apprehensions in San Diego has significantly exceeded the number of apprehensions in McAllen.

Senator HUTCHISON. Not two-thirds more.

Ms. RENO. We will be happy to work with you and sit down with you, look at it, see how we can balance, see what we can do. As you know, you are referring to the specifics because you have been so helpful in providing sensors and providing the equipment, in committing resources. We have, with respect to the violence that you talk about—which is primarily in the Eagle Pass Area—we have designated that as a hot spot and have tried to organize resources around it. With respect to the Del Rio sector, it has been designated to receive 52 new agents for fiscal year 1997. We will look with you, and I will ask my staff to call and arrange an appointment and come see you and just look at the balance, look at the figures, and see what we can do.

Senator HUTCHISON. I really would appreciate it because, as you know, I have written you letters and have talked to your staff, our staffs have talked together, for over 2 years, and we feel that the situation is getting worse, not better, and it is going into other remote areas. I have visited out in Marathon and Alpine, and these are places that just do not have the ability to deal with these kinds of crime issues because they are not areas that have had to deal with crime to any great extent in the past, and they are very underforced. So I would love to talk to you more about it, but I would like to see more action and more relief for this 1,200 mile border area with the resources that you have, and I must say that when you have the ability to hire 1,000 and you are only requesting 500, not only the ability but the direction to add 1,000 agents, and you are only asking for 500, I have to say that I am unconvinced that we are doing everything we can.

Ms. RENO. It is one of the more difficult issues that one has in trying to prepare. I have been through that experience. A community that I love very much, beginning in the late 1970's, experienced an assault of trafficking from outside our borders that is as stiff a threat as any community in this Nation received. The police department and the prosecutor's office hired as rapidly as we could, and it produced problems. It is something that is a very difficult issue to judge, but we will be happy to work with you in every way that we can to address the issues in the most responsible manner possible.

## CITIZENSHIP USA

Senator HUTCHISON. Let me move on to a slightly different subject, but one that will bear again on the criminality in our country, and that is the thousands of immigrants with apparently criminal records that were cleared for citizenship in 1996. I would like to ask you why the INS had such pressure to clear immigrants for citizenship before all of the normal processes had been accomplished?

Ms. RENO. The INS inherited, or this current leadership in the INS inherited, a system whereby the system that had been in place for processing naturalization requests extended back to 1982. In 1995, they received a significant number of requests and had anticipated a significant increase in applications for naturalization because of the amnesty granted during the 1980's. In addition, they found that there was an additional increase over and above what otherwise would have been anticipated because of the concerns created by proposition 187 and so people who had been eligible for naturalization were seeking to naturalize. Beginning in 1995, they began to prepare for this increase and to prepare to address it.

Senator HUTCHISON. Ms. Reno, let me just ask you, are you going to try to make the case that the procedures were not short circuited in 1996?

Ms. RENO. No.

Senator HUTCHISON. Why were they short circuited in 1996?

Ms. RENO. Because there was a system in place that did not work very well. In 1994 the inspector general had recommended some changes. INS was in the process of putting those changes in place, but some of it required automation. They still had not gone far enough, but they were not seeking to bypass or to shortchange procedures that had been in place.

Senator HUTCHISON. Why would you not just continue or why would not INS just continue the procedures? Why did it have to be done on such a haphazardous basis and particularly in the area of criminal record checks?

Ms. RENO. As I am pointing out, the system had been in place. I do not think much of the system, but they were not trying to shortchange anything or short circuit what had been in place. What is important now is to identify the steps that have got to be taken, and I have tried to do it in terms of what we need to do to move forward and make sure that the system is in place and operating correctly.

Senator HUTCHISON. Are you not going to check the records of those who have already been naturalized and try to enforce the ban of people with criminal records becoming citizens?

Ms. RENO. I am checking that right now, as I am saying. As I have learned of this process, I am trying to do everything I can to make sure that the process works like it should and that we review what has been done to correct any errors. Let me describe to you what we are doing. INS field offices have been instructed to confirm that the FBI fingerprint check is completed and that any FBI criminal history information is in the applicant's file before naturalization proceedings are completed.

Senator HUTCHISON. Let me just ask you this question because I have one other area that I need to cover, and I only have 2 minutes. Are you going to try to reverse the process if people were naturalized in this 1996 group with criminal records?

Ms. RENO. That was the last point I was going to make.

Senator HUTCHISON. Thank you. Could you?

Ms. RENO. Yes; we are going to revoke, take steps to revoke all citizenship improperly granted, and let me use my 2 minutes just to explain to you—

Senator HUTCHISON. I am afraid that it will be my 2 minutes.

Ms. RENO. OK. I will not take your 2 minutes, but I will explain if, Mr. Chairman, you will give me.

Senator GREGG. Well, we are going to get into that issue later on.

#### VAL VERDE COUNTY MILITARY VOTING ISSUE

Senator HUTCHISON. OK. Let me ask one more question then on my 2 minutes because that is another area of concern, and that is the Val Verde County military voting issue. I am very concerned that the Justice Department has taken a we-will-monitor-it-closely attitude to standing up for the rights of our military voters who have really been harassed in a case that was brought to disallow two people elected in Val Verde County because there were 800 military absentee votes. And I would just like to ask you if you are going to stand up for the rights of military voters because you are the legally designated counsel for the military personnel in this type of case?

Ms. RENO. I am going to, and let me give you some evidence of what we are trying to do. This is a letter signed by the Joint Chiefs of Staff, all six of them:

MADAM ATTORNEY GENERAL: This is to express sincere gratitude for your efforts regarding the lawsuits filed in Texas challenging military absentee ballots. The voting rights of the men and women serving our great Nation in uniform, as well as their families, must not be diminished because of a military assignment outside their State of residence. We understand your Department is closely monitoring these cases and has had frequent contact with State and Federal officials. We greatly appreciate your personal involvement in protecting the voting rights of our people and their families. Please do not hesitate to call us if we can provide any assistance.

Senator HUTCHISON. Madam Attorney General, I am pleased that they have thanked you for your efforts, but when the Justice Department filed an unsolicited amicus brief in the ninth circuit in California opposing proposition 209 to make it illegal to discriminate against any citizen in their right to vote, and yet you have taken a wait and see attitude on Val Verde and refuse to intervene on behalf of the our military personnel, I am very concerned that they are not going to have proper representation.

Ms. RENO. The Federal matter has been on March 11. Just recently, we participated in a conference call with the Federal judge who reiterated that the case before him was stayed and that the answers to the questionnaires would not be required. We are pursuing every opportunity that we can to properly protect the rights of the servicemen involved.

Senator HUTCHISON. How about an amicus brief?

Ms. RENO. I am not aware of an amicus brief filed in the Texas case because there is not a matter pending. The Federal proceeding has been stayed.

Senator HUTCHISON. Thank you, Mr. Chairman.

Senator GREGG. Did you want to make that comment now—we are going to go back to this whole immigration issue and how you plan to address it.

Ms. RENO. Why do we not just do it in an orderly way.

Senator GREGG. OK. Senator Domenici.

Senator DOMENICI. Mr. Chairman, I was not present when you established the ground rules. Are we on 5 minutes?

Senator GREGG. We are basically working on about a 10-minute, fairly flexible questioning period.

Senator DOMENICI. I have an awful lot of questions. I am going to make sure that they are submitted for the record. I have to be at a markup and another hearing that I am presiding at, so I will give you about 12 questions. You can just give them to the Attorney General. I would appreciate answers as soon as possible.

#### SPECIAL IMMIGRANT STATUS FOR CERTAIN JUVENILES

I want to ask about a certain issue that has been brought to my attention that is bothering me as what may be the improper use of our immigration laws. Madam Attorney General, let me just cite a couple of factual cases to make a point and then ask you what you think about this. In 1990, the Congress enacted a provision entitled, and I quote, "Special Immigrant Status for Certain Juveniles Declared Dependent on a Court." That was the name of the act. This section was intended to be reserved for certain juveniles who were abused, neglected, or abandoned.

For example, in 1991, after that act, a small child was brought illegally from Mexico by her parents. The child was sexually abused and beaten by the parents. The Department of Health and Human Services in New Mexico took custody of the child and petitioned on her behalf for the appointment for special immigrant status under that statute. She was granted permanent resident status. The parents were deemed to be unfit parents, and the child was placed into foster care and eventually was adopted by U.S. citizens who became adoptive parents.

The child was 11 years old when she was granted this permanent status. Clearly, this was the type of case that the special immigrant status was designed to protect. Unfortunately, in New Mexico, we have found that the special immigrant status provision is being used for some other cases that I believe are clearly an abuse. For example, in February 1996, a petition for a permanent guardianship was filed by a relative of a juvenile with the court in New Mexico. The juvenile, who was on her way to college under a non-immigrant student visa, did not even arrive in the United States until March of the same year. The juvenile, who was just 8 days shy of her 18th birthday, the age of majority in New Mexico, was later granted eligibility for special resident status.

In another case, a 20-year-old Mexican male entered the United States as a foreign student. Guardianship was given to his uncle by consent of his parents in Mexico. The 20-year-old became a resident because the court determined in a petition granting guardian-

ship to the uncle that the boy was quote "eligible for long-term foster care," the words of art required by the statute granting that special quality.

Finally, in another case, an 18-year-old Venezuelan male received permanent resident status by way of the special immigrant status provision. He was studying in the United States as a foreign student. A petitioner of unknown relationship went to the court and petitioned for permanent guardianship. The attorney stated that the parents in Venezuela had failed to respond to a notice that they were provided. On that basis, the court declared the Venezuelan male a dependent of the court allowing him to seek permanent resident status. Now I don't know how many more of these cases there are, but I might ask if you would agree with me that special immigrant status should not be given to the individuals described above who are neither abused, neglected, or abandoned, and who in these cases came here to attend our universities and either were attending or planned to attend when the petitions were filed? And if you do not have an answer to that yet, would you work on it? It seems to this Senator that this is a giant loophole. When the lawyers find this, every visiting student from overseas can have a petition filed in a State court declaring that they are a ward and in need of foster care. It is ex parte from what I can tell—I looked at these petitions—and the courts are only interested in whether there is any burden on the State, and since there is none, they are granting them. Should we do something about this?

Ms. RENO. We certainly should, Senator, and when you raised the issue with me several days ago, I immediately started checking. We are going to review all this area to see what can be done, whether we need legislative changes, what we can undertake through investigation to undo it, and if I may I will ask my staff to contact your staff, get the specifics that you have, and we will continue to report back to you on what we find and work with you if legislative efforts are necessary to correct the loophole.

Senator DOMENICI. I would hope that as your people in the field review these cases and find them, that they would be called to your attention specifically because I think in some cases there could be a serious misleading of the court. We have one where the student has not yet entered the country when the petition is filed, and the petition seemed to have been filed to avoid that person reaching the age of majority.

Ms. RENO. That is what I have asked for because I want to investigate each instance to see whether there is a prosecution that should result because of false statements made or false statements made through the INS procedure. We will work with local prosecutors, but we intend to followup on it, and I appreciate your noting it for me.

Senator DOMENICI. Thank you, Mr. Chairman.

Senator GREGG. It might also be helpful if you find that there is a problem if you could give us some language which would correct it so that we could put it in the bill even though we may be limited in our language.

Senator DOMENICI. You will give us a legislative fix if we need it?

Ms. RENO. Absolutely.

Senator DOMENICI. All right. Mr. Chairman, I yield back my time and thank you for your generous time.

Senator GREGG. Thank you. The Senator from Maryland.

Senator MIKULSKI. Thank you, Mr. Chairman, and I cannot see any lights or anything.

Senator GREGG. No; it is a very casual 10 minutes.

Senator MIKULSKI. Thank you. And if I am approaching my time, I ask the Chair to remind me.

Senator GREGG. It is very much a flex time.

Senator MIKULSKI. First of all, good morning, Madam Attorney General. It is delightful to be here with you, and I am a new member to this subcommittee and really look forward to an active participation and working with you, Mr. Chairman. We have worked on the Subcommittee on Aging and also Treasury and General Government. It is amazing how our careers go.

#### COPS PROGRAM

Madam Attorney General, ultimately, fighting all crime is local, and I have a series of questions about the COPS program, but also we in Maryland have a very unique situation because so much of the crime impacting our suburbs adjacent to Washington are what we would call interstate crime. First, there is I-95 which is almost like a corridor of death, with illegal drugs and illegal guns and so on. We know we have the HIDA program, the high intensity effort. I visited that. Remarkable job that they are doing there. But at the same time, people get off, and they are in Montgomery and Prince Georges Counties.

Also, we have people leaving the District of Columbia and committing crimes in the suburbs and going back and forth again. My question to you is, what thoughts do you have for addressing this issue? We note that you have through the concurrence with the head of the FBI deployed a significant number of agents to Prince Georges County for a crime blitz. We are enormously grateful for that, and I speak for the county executive and all the residents for that. But that is a nice blitz to come in and get the most violent criminals, but I wonder if you have given thought to some type of regional agreement that would involve both Federal officials and local officials because we are in an interstate crime network? Did I make my question clear?

Ms. RENO. Yes.

Senator MIKULSKI. So we thank you for this FBI blitz. It will have a significance. But after they leave, we are looking to put in place a structure to be able to deal with the interstate consequences, whether it is hot pursuit with the District of Columbia, or the appropriate use of Federal law enforcement in local jurisdictions.

Ms. RENO. First of all, I am delighted you are on the subcommittee. I have been here for 4 years now. It is 4 years ago today, and I think this was the first subcommittee, first congressional committee other than confirmation that I appeared before, so I feel a bit at home here. What we did, I worked with the chief of police of Prince Georges County back in Dade County, and he described to me the problems that he saw with people going back and forth.

Senator MIKULSKI. So you know Farrell from Florida?

Ms. RENO. Yes; going back and forth across the line. Many months ago after he had gotten here, I called Director Freeh, U.S. Attorney Eric Holder, DEA Administrator Tom Constantine, and the Director of the Marshal Service, Eduardo Gonzalez, and said it is important that we enhance our efforts. We already have an antiviolence initiative, which I referred to earlier in discussions with Senator Hollings, in which we have tried to reach out to State and local prosecutors and law enforcement agents and form a real partnership, but I said it is imperative that we address this issue in a comprehensive way.

Lynne Battaglia in Baltimore I have asked to reach out to local prosecutors to determine what is the appropriate Federal role. We do not want to take credit. Sometimes it may be just exchanging information, but we want to do everything we can in terms of an antiviolence initiative that will utilize Federal prosecutors the right way to assist, and we are continuing that effort. I was not aware that they were going to announce something like this.

Senator MIKULSKI. It was in the Washington Post. I did not announce it. I wish I had the chance, too. [Laughter.]

Senator GREGG. Next time.

Senator MIKULSKI. But that is neither here nor there.

Ms. RENO. And Mr. Holder has got both hats on with respect to this area, but he and Lynne Battaglia coordinate as between the District.

#### BALTIMORE-WASHINGTON CORRIDOR

Senator MIKULSKI. What I am wondering, Madam Attorney General, you have got two U.S. attorneys, you have got FBI, you have local government, we have DEA, we have BATF, we have a lot happening. Do you see some type of coordinating mechanism or do you prefer these bilateral negotiations—bilateral arrangements as they are going on?

Ms. RENO. What I have asked in all these situations is that the U.S. attorneys serve as the coordinators, and I think it has proven very effective rather than just proliferating task forces, and then they assign based on what is important. It is interesting to note that it is not just this area, but you take the Eastern District of Virginia and you see the connections between Maryland and the Eastern District of Virginia. I think the coordination mechanism is appropriately in place.

Senator MIKULSKI. Well, then how do we deal with that, though, between—and I appreciate that—between U.S. Attorney Battaglia and U.S. Attorney Holder? Do they have like a cochairmanship?

Ms. RENO. My understanding is that they have a close working relationship, but what I will do is, when I leave here today, I will call both of them and Helen Fahey from the Eastern District of Virginia and see if further coordination is necessary.

Senator MIKULSKI. And if they need to essentially have a formalized arrangement where at least there is a monthly meeting maybe between the big guys, and maybe there really are.

Ms. RENO. My experience from these meetings, I have tried to let each district coordinate with others in the best manner possible. In Senator Gregg's district, there is one initiative underway that the U.S. attorney has led. In others, it may be a different situation.

One of the things I used to see in Miami, though, is that we would have formal meetings every month, and it would be a dog and pony show. Where the work really gets done is between people who have got the day-to-day understanding, the communication in place, and that is what we are striving for here in the Baltimore-Washington corridor. I will go back and review it.

Senator MIKULSKI. Well, I would like to be able to talk to you or your staff further about it. Let me then go to the next part of cops on the beat and thank you for the community policing effort. It has had a big impact certainly in my own State and particularly in urban suburbs as well as Baltimore city. This then gets me to what I call the techno cops. In meeting with my police chiefs, what they tell me is that now not only are courts backing up, but the whole issue of the need for greater forensic laboratory capability, the kinds of stuff, if you will, technological stuff that both maximizes police officers, the role of the laptop computer in the police car has been terrific, but also other things related to. For example, crime laboratory forensics so that a lot of the evidence that is now gathered is not only gathered from eye witnesses, but through technological gathering which is in some ways superior. Those little plates in a crime lab are not afraid to come forward, they do not need a witness protection program, and their memories do not fade. So what I am asking, having said that, do you see an extension and does it require statutory authority to also beef up our police departments, not in terms of bells and whistles and techno-gadgets, but really the use of both information technology and now in enhancing and amplifying their forensic laboratories?

#### INFORMATION TECHNOLOGY

Ms. RENO. First of all, let me address the information technology.

Senator MIKULSKI. Which has really been astounding.

Ms. RENO. And it is incredible. When a man can sit in the kitchen in St. Petersburg, Russia and steal from a bank in New York or a bank in Carroll County or someplace like that, you understand the challenges faced by State and local law enforcement. We have developed within the Justice Department, the Criminal Division, the National Institute of Justice, as well as the FBI, a working group that is trying to reach out to State and local law enforcement to provide the expertise, the training, and a plan with respect to equipment, because in this whole information technology area, we run into the situation of the technology changes so rapidly that equipment purchased 1 year ago becomes obsolete, and how can we share it? So we are making, I think, some progress in that regard, and I feel comfortable with that.

#### CRIME LABORATORIES

With respect to laboratories, we have a problem of that whether it be in Indian country where we are the first responder, if you will, and this is something that we are trying to address through a more comprehensive development and sharing of forensic services so that we have, if you will, a seamless web across the country. It is going to be so exciting in about 5 years, Senator. You are going to be able to have a lab tech go to the scene of a crime, take fingerprints at the crime, and immediately match them with a data base

across the country that can provide instant identification of the subject.

You will also have, and they estimate it will be about 5 years, you can do a DNA test at the scene of the crime and immediately match it with the data base that it is developing. In these last weeks, we have had two significant matches made through the DNA data base. It is just an exciting opportunity, a great challenge, but I am trying to work with the sheriffs, with the State law enforcement authorities, and with police chiefs to make sure that we share the information the right way.

#### EXCHANGE OF INFORMATION

The third problem is that with the exchange of information——  
Senator MIKULSKI. The third?

Ms. RENO. The third problem is—not problem but challenge—is that with computers we can now identify information and correlate it so that we identify evidence that can lead us to the right person far more quickly. It used to be if we had a convenience store robbery in Miami and there were five different convenience store robberies with a green automobile with a dented right fender, you never found it because there were 26 different police agencies. Now, we can begin to match these crime reports as they come in and make these identifications. We are going to be able to give tools to law enforcement that stagger the imagination, but it is important that we work together, and I would like to work with this committee in the years to come to make sure that our budget is reasonable and that it addresses this issue.

Senator MIKULSKI. Well, this is exactly one of the areas I think we need to focus on. It is really great to go back into your local community and announce more cops on the beat, and I believe that there is no substitute for a police officer, a trooper, a State trooper, or an agent of the Federal Government. But they need to be backed up and amplified, enhanced, and in many instances, even their own lives protected because of technology, either information or biological. So I want to work with you, and that is why I did not know if you needed new statutory authority, whether there were particular lists within the budget, what line items this comes in so that we can really have a plan, where we are this year, how we can build on it for next year, et cetera, to get you to that 5-year goal, and that each year we accomplish something and do not end up with the kind of boondoggle they have over at IRS with their computers. I will not draw you into that, but we are enormously frustrated. We appropriate money to bring agencies into the modern age, and then we are embarrassed by it.

Ms. RENO. The Senator and I are smiling because we have got our own problems.

Senator GREGG. A little bit, and we are attempting to avoid that, although we have already had that problem.

Senator MIKULSKI. I am not blaming that on you.

Ms. RENO. No, no, but the Senator knows this is one of the most important issues that we face in the Justice Department, in the Federal Bureau of Investigation: How do we move into an age of technology that law enforcement never dreamed of 15 years ago, and do it the right way within cost estimates on time? And I am

dedicated to trying to do that because I have been faced with issues of overruns in the IAFIS system. I am working with the FBI. I am trying to work with the chairman to identify issues where we can, and we have developed time lines, and I monitor on a regular basis these issues, so you do not have to draw me into the IRS problem. I deal with my own.

Senator MIKULSKI. Well, not to take the time of the committee, but see what happens is very often the people who buy it, it is like buying automatic weapons and everybody likes the latest gizmo or little hot-dog bell and whistle, and they are seduced by this green light or this little cute software program. We face it in politics where you have no idea how everybody will come in and give you the software program that will guarantee you a 92-percent victory. And it turns out to be folly, an expensive folly. So there is a difference between substance and salesmanship.

Ms. RENO. You are singing to the choir, Senator.

Senator MIKULSKI. OK. Having said that, if I could ask the indulgence for one other question. I know that you are focusing on juvenile justice and antigang initiatives, and, therefore, what I wonder is what you are advocating and also if part of the President's initiative is what you have in mind for prevention? I am a big believer in prevention, but as you know when we are involved in political debates and discussions, it is viewed as sissy, it is viewed as wimpy, it is viewed as ineffective, it is viewed as something better done by the Salvation Army, which I believe also is the right part of that, and, therefore, why are we in it? We get embroiled in trivial discussions like are we bankrolling midnight basketball? We are getting ready for this, and I am going to have a serious discussion on prevention. I wonder what you could share with us on that?

#### JUVENILE CRIME PREVENTION

Ms. RENO. As you know, Senator, when I testified before the Senate Judiciary Committee 4 years ago, I said that youth violence was one of the single-greatest crime problems that we faced. But after serving for 15 years as the State attorney in Miami, I recognized that we could not jail our way out of it; we could not prosecute our way out of it; we had to provide stiff sentences for the serious offenders, for those that committed crimes, so that they knew that there was a consequence for what they did, but we had to engage in far more effective prevention efforts than we had undertaken.

I think most Americans agree with that, but what they do not know is what is working and what does not work, and what also happens is there may be a wonderful prevention program for 8-, 9-, and 10-year-olds, and then nothing when they move into middle school. There is not a comprehensive effort underway in the community. So what we have tried to do since taking office is to work with communities. They have a program in Montgomery County now where we focus with the community in building a comprehensive effort with police, others working together, as in Boston. Prevention is working now.

Senator MIKULSKI. Well, what are some of those examples?

Ms. RENO. It is the chief of police and it is the sheriff who is saying the prevention programs are working. Let me describe to you

Boston. Commissioner Paul Evans is the police chief of Boston. He has worked together with the private sector, with religious leaders in Dorchester and Roxbury, with the probation service, with the courts, with the local hospital, with community activists in developing a comprehensive effort focused both on the serious offender but on preventing the crime in the first place, and it is exciting.

Senator MIKULSKI. What do they do? You told me who it is, but what is it?

Ms. RENO. Let me give you different examples.

Senator MIKULSKI. Do they have after-school programs?

Ms. RENO. They have after-school programs. They focus on conflict resolution. They have mentoring programs. One of the major insurance companies has a summer program where they bring youngsters in and teach them how to get job ready and teach them the responsibilities of jobs. They have the local hospital intervening with children who are victims of crime because they found out that the 12-year-old that gets shot may oftentimes be the shooter next time, thus interrupting the cycle of violence. They are using domestic violence money from the VAWA grants, realizing that that is one place, if you can stop violence in the home, you are going to make a difference.

They have community probation officers riding with community police officers, getting to know the neighborhood as a whole and working to get the kids out of trouble and to keep the kids out of trouble. It is an exciting program. In Jacksonville, FL, the State attorney is working with the local sheriff in focusing on the serious offender but developing prevention programs for youngsters, again along the lines of those in Boston. These programs can work when a community comes together and when we use our resources wisely. And it is the police chiefs and the sheriffs that are talking about it so I do not think anybody can call it wimpy anymore.

Senator MIKULSKI. No; that is not my phrase.

Ms. RENO. I understand that.

Senator MIKULSKI. You know I am a supporter of prevention, but that is often the way it has been portrayed. Thank you, Mr. Chairman. You have been very generous with the time. We could have these interesting conversations all day, but I yield and thank you for the courtesy.

Senator GREGG. Thank you.

Senator MIKULSKI. Thank you very much, Ms. Reno.

Senator GREGG. It is certainly nice to have you on the committee, and both the issues which you raised are issues which this committee has spent a considerable amount of time addressing, and we will look forward to your input. We did put together a prevention package last year. Senator Campbell played a major role in it, as did Senator Kohl, and so we will look forward to getting your input on that also.

#### INVESTIGATIONS

There are a number of issues which I would like to talk about in addition to what we have discussed already. Just to go back to the issue which is obviously the testiest, and which causes the most consternation—let me outline for you my concern—I do not know that you need to comment on it additionally but just in a rhe-

torical way outline it. It deals with the Public Integrity Division internal investigation that is going on relative to this issue that we see everyday dealing with elections and the Chinese connection, for lack of a better term. Now we have the FBI and the White House at opposite ends on how that was briefed. I presume it is also addressing the fundraising within the White House that occurred, especially the Vice President's most recent statements, and now we have the Justice Department presenting the statute in its scope of coverage. At least that is the way I perceive it.

I presume the Public Integrity Division is also looking at, or should be looking at, the issue of this immigration question and whether the acceleration occurred as a result of any political pressure for the election because that has clearly been in the public domain and involves election law questions, and even possibly, I presume, the Integrity Division, which, of course, is an INS issue, which is under the jurisdiction of the Justice Department. And I also presume that the Justice Department is looking in the Public Integrity Division relative to the elections into the issue of why Webster Hubbell was given hundreds of thousands of dollars to be an advocate when he was in the process of losing his license to practice law. Webster Hubbell was a former Justice Department official. The question it raises for me, is the issue of the perception as to the effectiveness of an internal Justice Department review and its objectivity.

I have the highest regard for the Justice Department, for the Attorney General, and for the FBI, and I do not want to see that credibility in any way eroded. So I just raise it as a point that I think that this is creating problems. It is creating problems in the public perception, and maybe it is an unavoidable event because of your portfolio of responsibility that you are going to have to confront these types of conflicts. The fact is that conflicts are building, and as a result, I think they are undermining the capacity of the public to have confidence in the activity that an internal investigation would bring forward, the information it would bring forward, and the decisions it would make—not necessarily determinative, because I still think that everybody has a lot of confidence in the Public Integrity Division. It is a very strong division. It does aggressive work, and everybody knows that they tend to take no prisoners and do their job effectively.

But there is the issue of perception that I am concerned about, and I think the issue of perception is being raised, and it continues to build. And so that is just a statement of thought on the issue, and if you want to respond to it, you can. If you do not, that will not bother me either.

Ms. RENO. Let me thank you for the nice comments that you made and just tell you that I share your deep concern. The Department of Justice is an institution that I cherish, and I do not want to do anything that will cause problems for its reputation or for it as an institution. At the same time, I discovered long ago that the chief prosecutor is damned if you do and damned if you do not. And the best thing you can do is just take the evidence and the law and do it as best you can according to what you think is right. I am so mindful of your concerns. I continue to address that issue on a regular basis, and I appreciate your thoughtful comments.

## FBI/WHITE HOUSE ISSUE

Senator GREGG. OK. We will move on to something else. Let me just throw in a further thought. I think there was some confusion about my representations, though, as to the FBI. My view is that if it is a contest between the FBI and the White House as to who I am going to believe, that it is not a contest. That is a personal and political statement, and I have a great respect for what the FBI does and for their integrity in their law enforcement activities, as I do the Justice Department.

## IMMIGRATION

Now on this issue of immigration, we know we have got about 10,000 felons that went through the system. It appears that there are about 170,000 or 180,000 people whose fingerprints could not be reviewed because they came through the system too quickly or the fingerprints were not capable of being reviewed. There may be, as I understand it, about 171,000 who have potential misdemeanors or felony arrests, but for whom we are not sure, and in that 171,000 there is 10,000 which we are pretty sure are felons. These are staggering numbers of people that went through the system who we have not had a chance to verify their status and some of whom we clearly do not want in our country.

My concern is this: the appeals process for getting revocation of naturalization status is long and interminable and incredibly expensive. I suspect we are going to find that if we can ever get a handle on those other 179,000 fingerprint cards or even the 71,000, we may find that this 10,000 number is a very low-ball number of the people we want to throw out of the system who got through. The appeals process is complicated. The investigative process of getting to the point of actually filing the decertification for these individuals is extensive, and then there are problems just finding these people. I mean if they are felons, obviously they are going to be smart enough to realize they are not going to walk into the office and say, "Oh, I am sorry, I got my naturalization papers incorrectly, here they are back." These folks are going to disappear and be extremely hard to find. I mean just tracking them is going to be a very expensive undertaking.

I know there is a \$10 million estimate on costs, but I think that is incredibly low, and it seems to me that we are looking at a huge cost to track these people. Obviously we have to. We have no choice. We have to find them. We have to take away their citizenship, take away their status and get them out of the country. But, No. 1, what is a realistic estimate here and, No. 2, where are we going to take those resources from? I do not want to see the basic enforcement activities of the INS—as you and Senator Hutchison pointed out, there is a lot still to be done on the Texas border and other places—be undermined by having to reorient resources to address this situation here which has gotten away from us.

So, two questions: one, how much is it really going to cost us in your estimation; and two, where are we going to find the money?

Ms. RENO. I think it is very important. First of all, I do not know what the cost will be in terms of revocation because we now have the capacity for administrative revocation. You are quite correct

that there will be investigations involved, but let me just point out to you because you used some figures, and I would like to clarify the figures. There were 71,000 identified as having some record; 34,700 of those were administrative violations which are not disqualifying; 25,500 were misdemeanors; and 10,800 had felonies.

Senator GREGG. Now can I ask one question on those numbers?

Ms. RENO. Yes.

Senator GREGG. Was there not also 179,000 whose fingerprints were not clear enough to make an assessment?

Ms. RENO. I am coming to those in just a minute. But of the 10,800 that were determined to have felony records, only 168 have been determined to be presumptively ineligible; 2,800 need further action for review and were in the process. You are quite correct in pointing out that approximately 179,000 we still have to pursue and we are in the process of doing that. And we will. Ms. Meissner and I will continue to work with you as we identify the sources of funds to correct the situation and try to keep you as advised as possible of the steps being taken by Peat Marwick.

Senator GREGG. Well, I really would like to get a more realistic estimate of what this is going to cost because I do not think the estimates we have—

Ms. RENO. What I would like to do, and what I have done from the beginning since I have determined what the situation is, is I asked Peat Marwick to report back to Mr. Colgate, the Assistant Attorney General for the Justice Management Division, on a regular basis any new developments, any new problems. I have tried to keep the relevant staff of the appropriate committees advised, and we will try to do that for you, as well, on a very regular basis and try to keep you as fully informed as possible.

Senator GREGG. Could you also advise us as to what the first cut is on how many of these 10,800 known felons we can identify where they are?

Ms. RENO. Yes; I will.

Senator GREGG. I mean can we find them?

Ms. RENO. Yes.

#### FBI FINGERPRINT ISSUE

Senator GREGG. In addition, as I understand it, the way this worked was that the INS mailed the fingerprints over to the FBI post and that was one of the major delays in paperwork problems. Is that true?

Ms. RENO. I think there were a number of different problems, and what I have asked Mr. Colgate to do on an ongoing basis—I think one of the problems that developed is that INS and the FBI did not talk together at a level that fully addressed in terms of a systems problem what was necessary to do it the right way. Mr. Colgate now has regular meetings with the representatives of both agencies at a sufficiently high level, and I think much progress has been made in streamlining it. I hear different comments. Both Mr. Colgate and Peat Marwick, I think, could give you more specifics, and what I would ask Mr. Colgate to do is to followup with you and make sure that Mr. Morhard has the information that you need on what caused it in the first place. I have also asked the inspector

general to review the whole matter to determine who is accountable for it so that I can take appropriate action.

Senator GREGG. I am presuming that INS gets tied into IAFIS? You have got this all running, right?

Ms. RENO. One of the concerns that has been raised is how does IDENT and IAFIS come together, and Mr. Colgate is focusing on that as well as trying to determine how we use these resources as wisely as possible in developing an IAFIS system that has no duplication—that this is one of the issues being addressed by the group that he is chairing.

#### FBI LABORATORY

Senator GREGG. Another issue, we have had these reports about the lab problems at FBI. When we get the lab going, which will, hopefully, be fairly soon—obviously it is going to take a few years, but is it presumed from what I have heard—I would just like to have you put it on the record—and from what I have asked and what I have been told, the FBI has put into place protocols, and they have put in place an outside review process, and by building the new lab, they will have addressed the basic issues of concern. Is that your understanding?

Ms. RENO. The FBI had already started to institute changes in the lab under Director Freeh's leadership. They have now been provided with the report from the inspector general. As you know, the inspector general brought in outside expert scientists who were some of the best in the field. I have had a chance to meet with them. And Director Freeh has now had the draft of that report and I know will build on any additional recommendations in that draft. In addition, he is doing a very extensive and very thoughtful and very methodical nationwide search for a leader for the lab that will represent the best possible person in terms of science and supervisory abilities.

#### LABORATORY CONSOLIDATION

Senator GREGG. Now I know DEA has, I think, 10 labs around the country and ATF has 3 or 4. DEA has a legitimate reason for having these labs, I think and a need for immediate review. This is not complicated stuff that they are working with in the way that the FBI often gets into extremely complex lab activity. I am sure that DEA's is complex, too, but not at the same level. But should we not be taking a look at whether ATF, and, of course, it is not your agency, but whether their lab should not be tied in to the FBI and whether or not we need all 10 of these DEA labs?

Ms. RENO. I think it is important for all of us, I asked the DIAP and Director Freeh to review the Justice Department laboratory facility's layout to see whether duplication was necessary, and as you point out, the working group issued its report in 1995, finding that the missions of the different labs were very specialized, and that it was important as they were cited to maintain the system as it was. I am constantly reviewing, in light of some of the concerns raised by Senator Mikulski, how we put these precious resources out across the country in the most comprehensive manner possible, both as between Federal agencies and between State and local and Federal agencies. I am constantly working with Ray Kelley, the

Under Secretary of Treasury, to address what we can do to avoid duplication, to ensure the most comprehensive coordination.

Senator GREGG. Do you work at all with the ATF people?

Ms. RENO. We have meetings, and you remind me I need to have another meeting shortly. We have had regular meetings with Treasury officials on issues of mutual concern, and I know Director Freeh and Mr. McGaw meet on a regular basis.

Senator GREGG. Should not the ATF be under the FBI?

Ms. RENO. I made a determination long ago in Miami and certainly after I came to Washington that if I kept pulling at other people's turf, I was going to spend an awful lot of time doing that. What I try to do—what I have tried to do these last 4 years—is not worry about the turf. Just make sure that I do everything possible to make sure that people talk together and share information.

Senator GREGG. I am going to take that as a yes. [Laughter.]

#### COUNTERTERRORISM

On another issue, which is this question of coordination on terrorism, which you know is one of my pet—

Ms. RENO. Can I just put in a little—that my silences should not be accepted as confirming your yes.

Senator GREGG. I recognize that. On this issue of terrorism and coordination of terrorism, can you sort of bring me up to speed as to what sort of relationship you have with the Secretary of State, the Secretary of Defense, and the Director of the CIA in a formal structure as versus an informal structure to coordinate the anticipation of a terrorist act from overseas as versus the execution of addressing a terrorist act that occurs here?

Ms. RENO. Since Secretary Cohen and Secretary Albright have come into office, I have not had formal meetings with them. With Secretary Christopher and Secretary Perry, we had developed a very good working relationship. I was told by people in both Departments that the working relationship with the State Department, in which we had put a lot of time and effort, was the best it had been on the issues of law enforcement. And I think we had comparable coordination with the Department of Defense. We spent—the Deputy Attorney General and the Director of the FBI—spent many, many hours working with the DI and with people at the agency to try to develop the closest coordination possible, and I think we have made real progress in that regard.

We have a coordinated CSG working group which really operates under the NSC and works together in a coordinated way—that it is the coordination subgroup, which is representatives of each Department working under the deputies; the deputies then have regular meetings as issues arise, and then when the deputies cannot agree, it is taken up to the level of the principals. But I have not had a principals meeting on a major issue with the new secretaries.

Senator GREGG. We are going to have a counterterrorism hearing in this committee, and in anticipation of that, hopefully, we can sit down and talk with you about coordination.

Ms. RENO. I would welcome that opportunity because I appreciated the opportunity that we had to have some discussions last fall, and it would be extremely helpful for me to be able to share

with you what we have done to get the benefit of your thoughts, and I would welcome that opportunity.

#### FEDERAL PRISON SYSTEM

Senator GREGG. Now, in the prison area, as I understand, the Federal system is about 25 percent overcrowded right now, and yet the number of dollars for new beds is cut. Can you give us your thoughts on how you are going to handle what is an exploding prison population with fewer beds?

Ms. RENO. I would ask Mr. Colgate to correct me if I am wrong, but the latest figures that I have seen, much of the forecast for prison construction was of a greater increase than has occurred, and I work regularly with Dr. Hawk to make sure that our requests match her needs for properly controlling against unwarranted overcrowding while at the same time ensuring that we have the capacity to make sure that we have truth in sentencing, and that the full sentences are served. In my more recent meetings with Dr. Hawk, I think we are on target in that regard, and I think she feels comfortable with the request that we have provided.

Mr. COLGATE. I would just add also we are dealing with the fact that buildings and facilities is no-year account, and you are really starting to see prior year appropriations, those institutions being completed, and constructed, so you are starting to see the activation curve of institutions that have been previously appropriated. So that is why, you know, our overcrowding is going down, but you do not necessarily see new budget authority requests in the out-years because of the significant resources that had already been provided in that no-year account.

Senator GREGG. So we are not going to hear in 3 to 5 years, when we would not be able to respond in a timely fashion, that we need dramatic increase in prison space for an immediate problem of overcrowding?

Ms. RENO. Not for the immediate problem of overcrowding. Let me caution you, though, because I used to deal with this situation at home, and I thought—the legislators would tell me you do not need any more prosecutors now, do you? And I would say no, and then 2 years later a crack epidemic would hit with a substance that nobody knew about and cause an escalation in crime. I am trying to monitor it very carefully to understand patterns, to do it as wisely as possible and to make sure that our requests for dollars are based on just what is happening, and we will continue to work with you, sir, if we may, and try to keep you advised of trends or problems that we foresee. But at this point, based on what we know now, and the information available to us, this seems to be a reasonable request.

Senator GREGG. Well, this committee is not adverse to adding more prison construction—

Ms. RENO. I appreciate that.

#### ADDITIONAL COMMITTEE QUESTIONS

Senator GREGG [continuing]. If that is what you need, or support for. Well, we certainly appreciate your time. You have given us a considerable amount of your day, and thank you for it. There is unanimous consent that a number of questions from various Sen-

ators be submitted to you, and I will honor that, and so you will be receiving a packet of questions.

[The following questions were not asked at the hearing, but were submitted to the Department for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR PETE V. DOMENICI

SOUTHWEST BORDER STAFFING

*Question.* Ms. Reno, you know I have been following with interest the Department's deployment of both funding resources and personnel along the Southwest border. I remain concerned that the two large neighbors to the west and east of New Mexico (California and Texas) could consume most of our border law enforcement resources leaving gaps in states such as New Mexico and Arizona.

I must thank the distinguished Subcommittee Chairman and his staff for assisting me in monitoring this ongoing situation. I also thank you, Ms. Reno, for the detailed responses you gave to my several questions on this issue last year.

I know that the Department is currently undergoing the deployment of additional Border Patrol agents and other law enforcement and support personnel along the border. The interim plan now being implemented also redeploys some 200 Border Patrol agents to the Southwest border.

Ms. Reno, could you give the Subcommittee a brief review of the interim deployment plan for Border Patrol agents and support personnel?

Answer. The INS is in the process of deploying 714 Border Patrol agents and 100 support staff of the new personnel received in fiscal year 1997. The deployment plan for the remaining 286 Border Patrol agents will be completed by the end of April. Chart A provides a list of the interim deployment locations by Border Patrol Sections and Stations.

*Question.* Of the 1,000 new agents approved for fiscal year 1997, how many have actually been deployed?

Answer. Of the 1,000 new Border Patrol agents, Congress has approved the deployment plan for 714 Border Patrol agents.

*Question.* How many of these agents are being sent to the El Paso Sector for New Mexico?

Answer. The El Paso Sector received 73 of the 714 Border Patrol agents; 52 of the 73 were deployed to New Mexico stations.

*Question.* How many Border Patrol agents, investigators and support personnel are currently deployed in New Mexico? Would you please provide this information by station?

Answer. As listed in Chart A, 52 Border Patrol agents were deployed to 3 New Mexico stations (Deming 13, Las Cruces, 13, and Santa Teresa 26). Las Cruces, NM Station received 2 of the 7 support positions deployed. There are no new investigator or support staff positions deployed to New Mexico. Filled positions as of February 15 are:

	BPA	Investigators	Support
Lordsburg .....	28	.....	1
Truth or Consequences .....	12	.....	1
Las Cruces .....	80	4	6
Alamogordo .....	53	.....	2
Carlsbad .....	8	.....	1
Deming .....	85	.....	3
Silver City .....	2	.....	.....
Albuquerque .....	4	.....	.....
Santa Teresa .....	87	.....	15
Total .....	359	4	29

CHART A.—DEPLOYMENT OF FISCAL YEAR 1997 BORDER PATROL AGENT (714) AND SUPPORT  
(100) POSITIONS

Sector/station	State	Border Patrol agents	Support	Total
Del Rio:				
Bracketteville .....	TX	5 .....		5
Carrizo Springs .....	TX	5 .....		5
Eagle Pass .....	TX	27	1	28
Sector HQ .....	TX	.....	5	5
Total .....	.....	37	6	43
El Centro:				
Calexico .....	CA	24 .....		24
El Centro .....	CA	12 .....		12
Sector Headquarters .....	CA	.....	3	3
Total .....	.....	36	3	39
El Paso:				
Deming .....	NM	13 .....		13
Las Cruces .....	NM	13	2	15
Santa Theresa .....	NM	26 .....		26
El Paso .....	TX	21 .....		21
Sector Headquarters .....	TX	.....	5	5
Total .....	.....	73	7	80
Laredo:				
Laredo North .....	TX	18 .....		18
Laredo South .....	TX	16 .....		16
Sector Headquarters .....	TX	.....	6	6
Total .....	.....	34	6	40
McAllen:				
Brownsville .....	TX	81	1	82
Harlingen .....	TX	30 .....		30
McAllen .....	TX	28 .....		28
Mercedes .....	TX	20 .....		20
Harlingen .....	TX	.....	2	2
Kingsville .....	TX	.....	1	1
Sector Headquarters .....	TX	.....	12	12
Total .....	.....	159	16	175
Miami: Miami Station .....	FL	.....	1	1
Detroit: Sector Headquarters .....	MI	.....	2	2
New Orleans: Sector Headquarters .....	LA	.....	1	1
Ramey: Ramey .....	PR	8	1	9
San Diego:				
Brownfield .....	CA	7 .....		7
Campo .....	CA	6	1	7
Jacumba .....	CA	.....	1	1
Chula Vista .....	CA	7 .....		7
El Cajon .....	CA	6	1	7
Sector HQ <sup>1</sup> .....	.....	175	26	201

CHART A.—DEPLOYMENT OF FISCAL YEAR 1997 BORDER PATROL AGENT (714) AND SUPPORT  
(100) POSITIONS—Continued

Sector/station	State	Border Patrol agents	Support	Total
Total .....	.....	201	29	230
Tucson:				
Douglas .....	AZ	90	3	93
Nogales .....	AZ	76	2	78
Naco .....	AZ	.....	1	1
Wilcox .....	AZ	.....	1	1
Sector Headquarters .....	AZ	.....	9	9
Total .....	.....	166	16	182
HQ:				
Charleston Training Facility .....	SC	.....	5	5
National Firearms Unit .....	PA	.....	1	1
El Paso Flight Operations .....	TX	.....	2	2
Blaine: Blaine Sector Headquarters .....	WA	.....	2	2
Yuma: Yuma Sector Headquarters .....	CA	.....	1	1
WOR: Regional Office .....	CA	.....	1	1
Servicewide Total .....	.....	714	100	814

<sup>1</sup> All trainees will EOD at San Diego Sector HQ and further be assigned primarily to the mainline stations.

*Question.* Of the remaining agents to be deployed (286), how many do you anticipate will be deployed to New Mexico?

*Answer.* During April, INS will re-evaluate each sector's operational needs and make final recommendations to the Appropriations Committees on the 286 Border Patrol agent positions remaining to be deployed. Under the original deployment proposal, New Mexico stations would have received another 24 Border Patrol agent positions.

*Question.* The Border Patrol Deployment Plan is scheduled to be finalized in April. Is the Department on schedule to complete that in April? Will you give us your commitment to work with the Subcommittee as the deployment plan is finalized to ensure that there is a equitable distribution of these important law enforcement resources?

*Answer.* The INS will submit a proposed deployment plan for the remaining 286 Border Patrol positions to the Appropriations Committees in early April. Congress worked closely with INS on the deployment of 1,707 new positions. The Department of Justice is committed to an equitable distribution of these law enforcement positions and INS will work closely with the Subcommittees on the finalization of the deployment of the remaining 286 Border Patrol agents.

*Question.* Could you please provide the Subcommittee with the final distribution of the 200 redeployed Border Patrol agents including where they were transferred from and where they were actually redeployed?

*Answer.* The INS reached an agreement with the Appropriations Committees in July 1996 to change the mix of enforcement staffing at 32 Border Patrol stations and to change work assignments within the Border Patrol sectors to conduct more uniformed, border control duties and less investigative activities. Under the approved plan, INS has moved 73 Border Patrol positions to the Southwest border and an additional 127 workyears are being redirected to border control activities. The 73 redeployed positions and 127 redirected workyears combined will have the effect of improving the overall border control capability of the Border Patrol by 200 agents. Chart B provides the locations of redeployment.

CHART B.—REDEPLOYMENT OF BORDER PATROL AGENTS—NEW AGENTS AND REDIRECTED WORKYEARS

Border Patrol sector	Redirected workyears	Positions deployed to border	Total
Buffalo, NY .....	0.4 .....	.....	0.4
Detroit, MI .....	1.5 .....	.....	1.5
El Paso, TX .....	21.6 .....	4 .....	25.6
Marfa, TX .....	12.4 .....	.....	12.4
McAllen, TX .....	4.2 .....	29 .....	33.2
Havre, MT .....	3.3 .....	.....	3.3
Miami, FL .....	3.8 .....	.....	3.8
New Orleans, LA .....	1 .....	.....	1
Tucson, AZ .....	6.8 .....	9 .....	15.8
Yuma, AZ .....	9.6 .....	.....	9.6
Houlton, ME .....	.8 .....	.....	.8
Swanton, VT .....	.....	.....	.....
Del Rio, TX .....	10.9 .....	.....	10.9
Laredo, TX .....	7.1 .....	.....	7.1
El Centro, CA .....	6.6 .....	.....	6.6
San Diego, CA .....	4.6 .....	31 .....	35.6
Livermore, CA .....	20 .....	.....	20
Mayaguez, PR .....	.3 .....	.....	.3
Spokane, WA .....	7 .....	.....	7
Blaine, WA .....	4.2 .....	.....	4.2
Grand Forks, ND .....	.9 .....	.....	.9
Total .....	127	73	200

*Question.* Has the Department “backfilled” the positions as it committed to do when the Border Patrol agents were transferred to the front lines of the border? What is the status of this initiative?

*Answer.* The INS assigned 93 investigative positions to 30 locations as backfill for the investigative functions previously performed by Border Patrol agents in the Redeployment Plan. Vacancy announcements for the investigative positions were announced in the first quarter of fiscal year 1997. Selections were made for 76 positions, with the balance to be selected shortly. Of the 76 selections, 57 (75 percent) were Border Patrol agents from the interior locations.

*Question.* What is your current assessment of the law enforcement staffing situation in New Mexico?

*Answer.* The table below provides a summary of the current estimated law enforcement staffing levels for fiscal year 1997.

## DEPARTMENT OF JUSTICE LAW ENFORCEMENT STAFFING IN THE STATE OF NEW MEXICO

Component	Fiscal year 1997 Estimate		
	Agents/Attorneys	Support	Total
FBI .....	91	71	162
DEA .....	75	85	160
INS .....	363	29	392
USA .....	23	10	33
USMS .....	24	10	34
Total .....	576	205	781

*Question.* How would the additional Southwest border resources requested in the President’s budget affect New Mexico and your assessment of the law enforcement situation in New Mexico?

Answer. The Federal Bureau of Investigation (FBI) estimates that an additional 12 positions (7 agents, 5 support) would be allocated to the State of New Mexico. The Immigration and Naturalization Service (INS) proposes to assign an additional 50 Border Patrol agent positions to New Mexico in fiscal year 1998. The Drug Enforcement Administration (DEA) and the United States Attorneys (USA) have not yet determined how fiscal year 1998 requested enhancements would be allocated, however, any enhancements allocated will be based on the regional drug threat and/or their ability to demonstrate a direct and significant nexus to illegal immigration or drug activity emanating from the Southwest border area. In all likelihood, the State of New Mexico will receive additional resources from both DEA and USA.

The Department of Justice recognizes that due to the proximity of New Mexico to the country of Mexico, there is a need for a strong law enforcement presence and effort in the State. With the increases in drug trafficking, drug related violence and public corruption along the southwest border, law enforcement is and must continue to work together to thwart the threat of these acts. Some highlights of this cooperative law enforcement effort are summarized below.

- The FBI currently has three task forces operating within the Albuquerque field office, all of which have Federal, State and local law enforcement participation. The task forces include: New Mexico Violent Fugitive Task Force; Gang Task Force; and Joint Drug Intelligence Group.

- The DEA and the New Mexico State and local law enforcement agencies have maintained an excellent working relationship. During 1996, through Operation Pipeline, DEA and the New Mexico State Police were involved in a total of 69 road stops resulting in the seizure of 3,213 kilograms of marijuana, 307 kilograms of cocaine, 10 kilograms of methamphetamine, and \$55,000 in U.S. currency.

Albuquerque Diversion Group continues to be an active participant in the New Mexico Health Care Fraud Task Force along with many other Federal and State agencies.

- The USA has been a key participant in working with the other Federal, State and local law enforcement agencies to foster greater prosecutions, convictions, and incarcerations. Over the last few years, greater numbers of immigration and violent crime cases have been prosecuted in the District of New Mexico.

- For example, the number of immigration cases filed in the District increased from 103 in fiscal year 1995 to 162 in fiscal year 1996, a 57 percent increase. Of the immigration defendants whose cases were closed in fiscal year 1996, 93 percent were convicted, with 78 percent of the convicted defendants sentenced to prison.

- Regarding violent crime cases, a total of 155 cases were filed against 172 defendants, representing a 22 percent increase in case filings and a 25 percent increase in defendants charged when compared to fiscal year 1995. Of the violent crime defendants whose cases were terminated in fiscal year 1996, 88 percent were convicted, with 82 percent of the convicted defendants sentenced to prison.

#### SPECIAL IMMIGRANT STATUS

*Question.* Madam Attorney General, in 1990 the Congress enacted a provision entitled "Special Immigrant Status for Certain Juveniles Declared Dependent on a Court." This section was intended to be reserved for certain juveniles who were abused, neglected or abandoned.

For example, in New Mexico, in 1991 a small child was brought illegally from Mexico by her parents. The child was sexually abused and beaten by the parents. The Department of Health and Human Services in New Mexico took custody of the child and petitioned on her behalf for Special Immigrant Status. She was granted permanent resident status. The parents were deemed unfit parents and the child was placed in foster care and eventually was adopted by her U.S. citizen foster parents. The child was 11 years old when she was granted permanent resident status.

Clearly, this was the type of case that Special Immigrant Status was designed to protect. Unfortunately, in New Mexico we have found that the Special Immigrant Status provision is being abused by certain juveniles.

For example, in February of 1996, a petition for permanent guardianship was filed by a relative of the juvenile with a court in New Mexico. The juvenile, who was on her way to college under a nonimmigrant student visa, did not even arrive in the United States until March of the same year. The juvenile, who was just 8 days shy of her 18th birthday (the age of majority in New Mexico), was later granted eligibility for Special Resident Status.

In another case, a 20 year old Mexican male entered the United States as a foreign student. Guardianship was given to his uncle by consent of his parents in Mex-

ico. The 20 year old became a permanent resident because the court determined in the petition granting permanent guardianship to the uncle that the boy was "eligible for long-term foster care."

Finally, in another case, an 18 year old Venezuelan male received permanent resident status by way of the Special Immigrant Status provision. He was studying in the United States as a foreign student. A petitioner of unknown relationship went to the court and petitioned for permanent guardianship. The attorney stated that the parents in Venezuela failed to respond to the notice they were provided. On that basis, the court declared the Venezuelan male a dependent of the court allowing him to seek permanent resident status.

General Reno, would you agree with me that Special Immigrant Status should not be given to the individuals just described above, who are neither abused, neglected, or abandoned?

Will you commit to working with me and with this Subcommittee to fashioning a solution to close this loop-hole so that Special Immigrant Status continues to be reserved for those abused, neglected or abandoned children that the statute was designed to protect, while at the same time prohibits the practices we are observing in New Mexico from occurring?

Answer. Yes. I agree with you that individuals like those described in the examples provided by you should not be granted Special Immigrant Status. I have directed the INS to evaluate its implementing regulation and procedures to determine what necessary administrative steps can be taken to correct the loophole. Should we determine that this loophole can only be closed through a legislative action, we will submit recommended legislative language to you and the Subcommittee for consideration.

Regarding the three cases that you cited, the INS contacted your office and obtained redacted court records on each case. These records do not contain enough data (i.e., name, date of birth, social security number, etc.) that will allow INS to thoroughly investigate the case. The INS contacted the 2nd Judicial District Court in New Mexico and was informed that records appointing guardianship are "sequestered and not available to anyone other than the persons named in the order." Therefore, we are unable to investigate further.

#### JUVENILE CRIME

*Question.* There currently are several juvenile crime legislative proposals which have been introduced, both by the President and Members of the Senate on both sides of the aisle. Juvenile crime seems to be at the top of everyone's agenda.

What do you believe are the most important issues we should address in juvenile crime legislation this year?

Answer. Youth violence is a problem affecting us all. We must give communities the tools and resources they need to take back their streets and schools, and to reestablish a sense of security in our country. The President's legislation, S. 362, "The Anti-Gang and Youth Violence Act of 1997," offers a balanced approach to fighting juvenile crime. This legislation proposes new laws and new resources to target gangs, gun crimes, illegal gun markets, and drugs. In addition, the bill invests substantial new resources in anti-truancy, school violence, and other similar initiatives aimed at getting or keeping young people on the track to success. We believe what is needed is a balance of sanctions, early intervention, and prevention if we are going to be successful in arresting juvenile violence.

*Question.* Would you agree with me that the current federal rules related to "sight and sound" separation of juveniles in state facilities are too rigid and difficult for many communities, particularly rural ones, to implement? How can we alter the "sight and sound" mandate in the federal Juvenile Justice and Delinquency Prevention Act to better meet the needs of rural communities?

Answer. The current Federal rules relating to sight and sound separation were modified by regulations taking effect in December, 1996 by the Office of Juvenile Justice and Delinquency Prevention (OJJDP) with an eye toward the needs of rural jurisdictions.

Specifically, section 223(a)(13) of the Juvenile Justice and Delinquency Prevention (JJDP) Act provides that accused and adjudicated delinquent, status offender and nonoffender juveniles shall not have contact with incarcerated adults. It is important to maintain a separation requirement to protect juveniles from harm and influence by adult offenders. However, it was clear that changes could be made in the regulatory and statutory requirements that would help rural communities having difficulty meeting the requirements of the JJDP Act, while at the same time maintaining protection of vulnerable young offenders.

Steps have been taken to address the concerns of rural communities through regulatory changes and the Administration has proposed additional flexibility in the Anti-Gang and Youth Violence Act, H.R. 810/S. 362. In 1996, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) undertook a comprehensive review of its Formula Grants Regulation, 28 CFR Part 31, which guides States' implementation of the Formula Grants program. Based on public comment, including input from public interest groups and professionals in the juvenile justice field, a revised regulation was published on December 10, 1996. It provides enhanced flexibility to State and local governments in implementing the core requirements of the Formula Grants program, including the separation requirement.

The prior regulation required that while juveniles were in secure custody in an adult facility, any "sight or sound" contact with adults was a reportable violation. In reexamining the regulation, it became apparent that the States needed clearer guidance with regard to the definition of "sight" and "sound" contact. Therefore, sight contact was defined in the new regulation as clear visual contact between incarcerated adults who are in close proximity to juveniles, and sound contact was defined as direct oral communication between incarcerated adults and juveniles in secure custody. While separation may be provided through either architectural or procedural means, the revised regulation provides that "sight or sound" contact that is both brief and inadvertent or accidental must be reported as a violation only if it occurs in secure areas of the facility that are dedicated for use by juveniles, including any residential area. It further provides that the separation requirement of the JJDP Act no longer applies in instances in which an alleged or adjudicated delinquent offender has reached the age of full criminal responsibility and has been transferred, pursuant to State law, to a facility where the delinquent has contact with adult offenders.

Additional flexibility for rural areas has also been provided in instances where the locality desires to collocate a juvenile detention facility on the same grounds or in the same building as an adult jail or lockup. The prior regulation required that to collocate a juvenile detention facility with an adult jail or lockup, the two facilities could not share the same program space (such as recreation areas or classrooms). The JJDP Act provided that the two facilities could not be served by the same direct care or security staff. OJJDP's December 1996 regulatory change eliminated the separate program space requirement, permitting the shared use of nonresidential areas of collocated juvenile and adult facilities, provided that time-phased use maintains "sight and sound" separation between juveniles and adults.

The Administration's pending bill (H.R. 810/S. 362) further proposes to eliminate the separate direct care and security staff requirement, provided that all security staff serving the juvenile population are trained and certified by the State to work with juveniles. The Administration's bill also provides additional flexibility for rural areas by extending the authority for adult jails and lockups in these areas to hold an alleged delinquent from the current 24-hour exception to 48 hours, exclusive of weekends and holidays. Further, it removes the condition that, in order to use this exception, a State has to provide an initial court appearance for every juvenile in secure custody within the exception time-frame—a condition in the statute that has prevented many States from using the rural exception. Finally, the Administration's bill provides that a juvenile may be held (separated from adult offenders) for any length of time authorized by State law in a rural adult jail or lockup, with the consent of the juvenile, the juvenile's parent or guardian, and concurrence of counsel, and with the approval and oversight of the judge of the court of jurisdiction. We believe that the regulatory changes and the modifications proposed in the Administration's bill will enable all communities to meet the separation requirement, while continuing to protect the safety and due process rights of juvenile offenders.

#### OUT-YEAR NEEDS OF JUSTICE DEPARTMENT PROGRAMS

*Question.* Attorney General Reno, the President's Budget includes about \$5.5 billion for Violent Crime Trust Fund programs in 1998 and then about \$5.8 billion in 1999. However, the President's Budget cuts Violent Crime Programs from the 1999 level by \$1.3 billion in 2000, \$1.4 billion in 2001 and \$1.3 billion in 2002. Included in the Violent Crime funding are ongoing personnel costs for programs like the FBI, DEA and the Attorney Generals. The Budget would increase spending on these personnel costs in 1998 and 1999, then potentially force these agencies off the cliff after 1999.

Presumably some of the additional funds would go to the Federal agencies. Could you provide for the subcommittee more detail of how the funds for the Department of Justice will be allocated in the outyears? Or if you cannot provide that detail, can you tell the subcommittee what programs will no longer be needed in 2000?

Answer. The Department of Justice (DOJ) Violent Crime Reduction Trust Fund (VCRTF) totaled \$5.179 billion in the fiscal year 1998 President's Budget, the remaining \$0.321 billion is requested for other agencies. The DOJ VCRTF includes: \$0.423 billion in Prevention Programs (e.g., Violence Against Women; Drug Courts; Substance Abuse Treatment Programs, etc.); \$3.312 billion for State and Local Law Enforcement (e.g., Community Policing-COPS, Byrne Grant Program, Violent Offender Incarceration Grants, Community Based Grants for Prosecutors, etc.); and \$1.444 billion for Federal Law Enforcement (e.g., General Crime Support for USA, FBI, DEA, INS and DOJ, Border Control, Criminal Alien Deportation and Asylum Reform).

The total VCRTF program is projected to increase by \$300 million from \$5.5 billion in 1998 to \$5.8 billion in 1999 before decreasing in 2000, 2001 and 2002. The reduction is primarily based on the phase out of the COPS program after 2000 when the goal of hiring 100,000 additional police officers will have achieved. The Administration's budget anticipates that the remaining VCRTF programs will increase by about 3 percent due to inflation. The President's budget projects continued funding for VCRTF programs through 2007.

*Question.* In S. 15, the Minority Side reauthorizes the Violent Crime Trust Fund through 2002 at \$6.5 billion. However, none of the new funding is allocated to Federal agencies.

Can you tell the Subcommittee of the impact on your agency if none of the reauthorized funding goes to federal programs?

Answer. The Department is not anticipating that the DOJ VCRTF funds would be reduced. The VCRTF funds for federal law enforcement provide critical resources for assisting the USA's, FBI, DEA, INS and the Department in investigating and prosecuting criminals and counter narcotics trafficking, as well as border control activities and criminal alien deportation and asylum reform. If new funding is not reauthorized for such Federal programs, the impact would be devastating to the DOJ Federal agencies. The fiscal year 1998 President's budget requests \$1.444 billion for federal law enforcement, providing funds for over 5,300 workyears. The Department does not project in the foreseeable future that such program needs would be significantly reduced. In fact, the 1998 President's budget projects continued funding of federal law enforcement efforts from the VCRTF through fiscal year 2007. Without continued funds, the Department would have to have a significant reduction-in-force of agents, attorneys and various support staff, with a concurrent reduction in law enforcement. Many critical drug and immigration initiatives are funded by VCRTF funds in 1998. These initiatives would be severely curtailed or eliminated.

#### MEXICO AND EXTRADITION OF DRUG TRAFFICKERS

*Question.* Attorney General Reno, there has been much discussion in the past few weeks of the President's decision to certify that Mexico is "fully cooperating" with our narcotics control efforts. I recognize that Mexico is taking some steps to help us in our efforts, but I am troubled by the fact that, in certain areas, Mexico has made very little progress. One of those areas is extradition.

To my knowledge, Mexico has never extradited to the United States a single Mexican national indicted in our courts on drug trafficking charges. Can you comment on why that has been the case?

Answer. While it is true that Mexico has not yet surrendered any Mexican drug traffickers to the United States under the extradition treaty, the Government of Mexico has authorized the extraditions of two Mexican nationals—Jesus Emilio Rivera Pinon, who must complete his Mexican sentence before being surrendered to the United States, and Tirso Angel Robles, who is in the process of appealing his extradition. Two other individuals charged with other categories of offenses, who were returned in 1996, had arguable claims to Mexican citizenship through marriage that were discounted by the Government of Mexico.

In the past, the traditional Mexican legal system did not allow for the extradition of its citizens, a policy classically pursued in most civil law countries in Europe and Latin America. Under the Zedillo Administration, however, this tradition has come under more careful and judicious scrutiny, and the process has invoked the seldom-used provision of Mexican law allowing extradition of nationals in "exceptional cases." Prior to this reconsideration of Mexican policy and law, the United States saw no reason to submit large numbers of extradition requests for Mexican nationals. Now that "exceptional cases" are being considered, there is every reason to believe that a steady increase in the extradition statistics will ensue.

*Question.* Does the Administration have a list of the "Most Wanted" Mexican drug traffickers indicted in the United States?

Answer. Over the last two years, the Administration has maintained and presented to the Government of Mexico a continuously updated list of priority extradition requests. This list includes both Mexican nationals and non-nationals—fugitives wanted for narcotics trafficking, murder, sexual assault, and child molestation.

*Question.* Does the FBI have any intention of placing Amado Carillo Fuentes (the “Lord of the Skies”) on the FBI’s “Ten Most Wanted” List?

Answer. The FBI, in consultation with the Drug Enforcement Administration (DEA), will strongly consider placing Amado Carillo Fuentes on the FBI’s Ten Most Wanted List as existing fugitives on the list are captured. Amado Carillo Fuentes is a very dangerous fugitive and both the FBI and DEA are actively seeking his apprehension.

*Question.* What specific steps will the Administration take in the coming weeks or months to work with Mexico on the capture and extradition of Mexican national drug traffickers?

Answer. In the coming weeks, the Administration will continue and intensify its consultations with the Government of Mexico on the compelling nature of our cases against major Mexican drug traffickers. We have submitted requests for the provisional arrests of several of these defendants for extradition purposes. We are in the process of assembling formal extradition packages against these individuals, which we intend to present to our counterparts in Mexico for their review, and we will engage in discussions as to the most appropriate jurisdiction for effective prosecution. The Government of Mexico has expressed its willingness to undertake this review with a receptive attitude toward granting extradition in the interests of justice.

We will also be working through highly selective channels of communication to develop and gather information and leads on the locations of major traffickers. We will continue to pursue effective apprehension operations, with equal emphases on success and safety of our law enforcement personnel. To the extent possible, the Administration will work to have requests for provisional arrests or extraditions in place prior to the arrests of wanted fugitives in Mexico, so that Mexican authorities will have a solid legal basis for detaining them. Once again, the mutual commitment by the United States and Mexico has been consistently pronounced, and it is the hope and intention of this Administration, that these joint commitments will lead to concrete results in the immediate future.

#### QUESTIONS SUBMITTED BY SENATOR BEN NIGHTHORSE CAMPBELL

##### IMPACT OF INTERNATIONAL CRIME ON THE UNITED STATES

*Question.* The United States has seen within its borders serious levels of Russian Organized Crime, Asian gang activity, international drug trafficking, and money laundering.

On March 6, I discussed this growing problem with Secretary of State Albright when she testified before this subcommittee. The Secretary indicated that international crime poses a “new situation” for the United States. She also indicated that our country is facing a “new set of threats.”

There are startling examples of the impact of international crime from my home state of Colorado:

—An outstanding warrant is pending in Denver for the arrest of Drug Kingpin Jorge Hugo Reyes Torres, the leader of one of the largest drug trafficking organizations in Ecuador. Torres is sought by federal officials for allegedly smuggling tons of cocaine into Colorado.

—In 1995, one of the most notorious Russian mobsters was found to have a Colorado driver’s license and an address outside of Denver. The FBI and Interpol reportedly identified this criminal as the most powerful player in Russian crime in the United States.

—And, as recently as last month, three residents of Pagosa Springs, a mountain community near Durango, were indicted by a federal grand jury on accusations of participating in an international money laundering scheme.

What steps is the Justice Department taking to address this new and growing threat of international crime and its direct impact on the United States?

Answer. While there has long been a nexus between criminal activities in the United States and illicit enterprises in other nations, the impact of international crime on the United States and its citizens has never been greater. The Department of Justice recognizes this threat and has marshaled its resources against the many facets of international crime. Chief among these threats, and of particular concern to the Department, are those activities involving terrorism, drug trafficking, money laundering, organized crime, and fraud. Many of the criminal activities originate

from countries where the tools of law enforcement and criminal justice institutions are surpassed by those of organized crime groups.

The Department's response to international crime is multi-faceted: The expansion of the Department's law enforcement presence overseas; the aggressive investigation and prosecution of crimes against U.S. citizens; the multilateral efforts to use extradition treaties, immigration laws, and other means to deny international criminals safe haven anywhere in the world; the promotion and coordination of international law enforcement efforts among multilateral organizations; the imposition of economic prohibitions from transacting with major international narcotics traffickers or any of their front companies; and training of foreign agents and prosecutors to improve their law enforcement capabilities.

In 1996, Congress approved a major expansion of the FBI's Legal Attaché program, which extends the reach of U.S. investigative efforts around the globe. Working with law enforcement officials in their host countries, FBI personnel in the Legal Attaché offices have increased the number of cases investigated overseas that impact upon the United States. For the future, we are proposing to open eight new offices and expand eight existing offices.

As the lead agency in addressing narcotics trafficking overseas, DEA and its country offices have worked to reduce the flow of drugs into the United States. These offices have allowed the Department to target international drug traffickers more effectively. DEA plans to open a new country office in Beijing, which will address major opium production in the neighboring Golden Triangle and Golden Crescent regions. The opening of the Beijing office is pending host national government approval.

The Department has also placed several attorneys around the world to work with representatives from other countries on case-related matters as well as to enhance relations with foreign governments. These DOJ attorneys frequently assist in drafting legislation, arranging extradition, and training foreign investigators and prosecutors on basic rule of law issues.

The Department has also expanded its efforts to investigate and prosecute international criminal activities against U.S. citizens and interests wherever they take place. For example, our resolve to bring terrorists to justice has resulted in many recent convictions. In September 1996, Ramzi Yousef was convicted with two accomplices for conspiring to blow up more than two dozen U.S. airliners, and in October 1995, Sheikh Abdel Rahman and nine of his followers were convicted for plotting to bomb several locations in New York City, including the Lincoln and Holland tunnels, the United Nations building, and the FBI Office. These two examples show how the FBI and other law enforcement agencies work hand in hand with the Criminal Division's Terrorism and Violent Crime Section to investigate, arrest, prosecute, and convict these international criminals.

The Department's ongoing battle against international crime also includes its aggressive use of immigration laws, extradition treaties, and mutual legal assistance treaties to prosecute criminals and return them to their country of origin. The INS has employed immigration laws to deport international criminals, unlawfully residing in the United States, back to their countries of origin, while strengthening our ability to prevent these criminals from entering this country. As evidence of our multilateral efforts, the number of requests for extradition and mutual legal assistance handled by the Department's Office of International Affairs (OIA) has nearly doubled in the last five years. Hundreds of these requests are made each year by United States, state, and local agencies seeking fugitives or evidence for cases within their jurisdictions. With the assistance of the Department, state and local authorities are able to locate and bring to trial defendants who have committed crimes in their communities and then fled from the United States. OIA has also worked with the State Department to increase the number of international law enforcement treaties with foreign countries. In 1996, you and your colleagues in the Senate approved twelve new extradition and mutual legal assistance treaties, which will advance our goals of denying safe haven to international criminals.

The work of the United States, however, is not enough. Because crime is a transnational threat that pays no respect to territorial borders, the United States has increased its law enforcement coordination with other nations. As the United States assumes the presidency of the G7/P8 organization, President Clinton has announced that international crime-fighting efforts will be at the top of the agenda. Among the issues that the Administration will promote are terrorism, high-technology and computer crime, and regional organized crime. The Department will continue to promote an anti-crime agenda and negotiate comprehensive multilateral treaties.

The challenge of international crime is one which the Department will continue to face. I believe that to successfully meet this challenge and combat the criminal

elements that threaten this country and its citizens, the Department cannot act alone. It must have the support of Congress, as well as foreign nations around the world.

*Question.* To what extent does the Justice Department coordinate with the State Department in this area?

*Answer.* In the area of international crime efforts, the Department of Justice (DOJ) has established a successful partnership with the Department of State (DOS), with whom all overseas activities are coordinated. As you heard in testimony from Secretary of State Albright, international crime poses new challenges for the United States, that we must all face together. In keeping with Presidential Decision Directive (PDD 42), signed by President Clinton on October 21, 1995, DOJ has worked with DOS and other U.S. government agencies to develop aggressive and coordinated attacks on international organized crime.

DOJ attorneys and law enforcement personnel work with their counterparts in DOS on a daily basis to ensure a coordinated approach to terrorism, drug trafficking, money laundering, extradition and a host of other criminal law issues. As DOJ's mission has expanded overseas, it has received the cooperation and support of DOS.

An example of our work together is the opening of the International Law Enforcement Academy in Budapest. The Academy represents the coordinated work of the DOJ, DOS, and other Government agencies to establish and promote the training of law enforcement officials from Eastern Europe, Russia, and the Newly Independent States. To date, 377 students from 19 countries have attended the seminar program there and gained the skills necessary to improve their anti-crime work.

The Criminal Division's International Criminal Investigative Training and Assistance Program (ICITAP) provides training to investigators and other law enforcement personnel from foreign countries. The ICITAP program is funded by the State Department and, therefore, maintains a close working relationship with State in order to coordinate its training programs.

As we increase our efforts against international criminal organizations, all government agencies must work together. I am firmly committed to the cooperative work of DOJ and DOS, and I look forward to working with Secretary of State Albright to address the major threat posed by international crime.

#### ASSISTING OTHER COUNTRIES FIGHT CRIME

*Question.* Many countries around the world are experiencing rising crime rates, increasing violence, and a breakdown in law enforcement. Much of this crime has an impact on the United States, either directly in our communities or indirectly by destabilizing our friends and allies.

The seriousness of this issue was addressed by A.I.D. Administrator Brian Atwood in his testimony on February 27 before the Foreign Operations Subcommittee. Mr. Atwood stated: "The reality is that most nations in conflict simply lacked the institutional capacity to avoid escalating violence."

The United States has a wealth of expertise in "what works" to fight crime, drugs, and gangs. Experts who have first-hand experience in these areas—from law enforcement to community-based organizations—could be invaluable resources to other countries experiencing these problems if some technical assistance were available.

The Justice Department has a number of offices and programs which work in the international crime arena. These include: the Executive Office of National Security in the Deputy Attorney General's Office; the Office of International Affairs in the Criminal Division; an international clearinghouse of justice information operated by the Department's Office of Justice Programs; the International Criminal Investigative Training and Assistance Program (ICITAP) which is funded by the State Department; and the FBI and DEA which are actively involved in major international crimes and drug trafficking.

To what extent do these programs provide technical assistance and expertise—from law enforcement to community leaders—to assist other countries with gangs, drugs, and crime?

*Answer.* The Department provides technical assistance and expertise in the international crime arena through many programs. One component within the Criminal Division that provides such training is the International Criminal Investigative Training and Assistance Program (ICITAP). Its mission is to train investigative and law enforcement personnel in foreign nations.

ICITAP provides worldwide training designed to enhance police services in foreign nations. It supports United States policy by providing law enforcement institutional development assistance and training to foreign countries, based on internationally recognized principles of the rule of law and human rights. Crafted in partnership with the host country, ICITAP's programs enable police organizations to deliver ef-

fective police services, and lay the groundwork for the creation of specialized programs or units to address issues such as drugs and gangs. Training in gang intervention and investigations, as well as related seminars and internships are ongoing in South Africa, Guatemala, Honduras, El Salvador, and Panama.

ICITAP uses a cadre of federal, state, and local police and criminal justice experts as instructors, consultants, subject matter specialists, and program managers to implement creative solutions to pressing crime problems and to help forge ties with foreign law enforcement officials. ICITAP also partners with other donor nations to maximize the impact of limited U.S. resources. Since its creation in 1986, ICITAP has conducted projects in 38 foreign countries, and 21 of those projects remain active today.

In addition, the Criminal Division coordinates training of prosecutors in specific criminal law areas, including narcotics, money laundering, and asset forfeiture investigations and prosecutions. The Narcotic and Dangerous Drug Section (NDDS) provides a variety of international training and assistance. NDDS has drafted a set of model laws, along with commentaries, granting authority to enable effective investigation and prosecution of criminal cases. The Section also has written a compliance manual for countries seeking to implement directives of the 1988 U.N. Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

NDDS attorneys have given significant presentations at several international seminars and conferences on many topics, including complex drug investigations, the effective use of investigative and prosecutorial techniques, the coordination of multi-agency money laundering investigations, and current U.S. law enforcement efforts in combating money laundering. Also, in collaboration with the Asset Forfeiture and Money Laundering Section, NDDS attorneys taught at two seminars for Colombian prosecutors on financial investigations, with a view to implementation of the newly-enacted Colombian asset forfeiture and money laundering laws.

All training and technical assistance efforts are designed to help in the creation or strengthening of foreign criminal justice institutions in a manner consistent with due process and fundamental human rights.

*Question.* To what extent do these Justice Department programs coordinate with the State Department?

*Answer.* ICITAP closely coordinates with the State Department and, in particular, its Agency for International Development (AID), on all overseas criminal justice development programs. ICITAP provides detailed plans to State and AID in order to explain and justify the resources committed to each of its programs. Similarly, the other Criminal Division training projects have worked with, and often been funded by, the State Department. DOJ and DOS representatives meet routinely to report on program developments and performance.

ICITAP is a member of the Interagency Working Group (IWG) on Anti-Crime Training and Technical Assistance, which is chaired by the State Department's Bureau of International Narcotics and Law Enforcement Affairs. The IWG coordinates law enforcement assistance for the New Independent States, Central Europe, and, increasingly, other geographic areas.

#### ROCKY MOUNTAIN HIDTA

*Question.* The Office of National Drug Control Policy (ONDCP) and the Drug Enforcement Administration are implementing the Rocky Mountain HIDTA. Colorado law enforcement officials on the State, county and local levels also will be involved in the HIDTA to wage this new, coordinated attack on drug trafficking in our region. This new HIDTA will be headquartered in Colorado, with satellite offices in Utah and Wyoming.

The growing need for a HIDTA in our region is clear. Investigations by law enforcement agencies indicate the drug trafficking problem, centered in Denver, impacts not only the neighboring States of Utah and Wyoming, but also the rest of the nation. In addition, evidence suggests that the Denver area serves as a transshipment point between Los Angeles, Mexico, and the East Coast.

I appreciate DEA's leadership role in implementing the Rocky Mountain HIDTA. What additional support can the Justice Department provide to the Rocky Mountain HIDTA?

*Answer.* The Department of Justice has already committed the Federal law enforcement agencies and offices to full-time participation in the Rocky Mountain HIDTA: United States Attorneys for the Districts of Colorado, Utah, Wyoming, FBI, DEA, INS, and U.S. Marshals Service. Resources for the Rocky Mountain HIDTA are allocated among six principal initiatives. These initiatives include a joint drug intelligence group, a Southwest Border interdiction task force, and a consolidated

Gangs/Violence Interdiction Task Force. DOJ, through the DEA and the U.S. Attorneys, will continue to take a leadership role in implementing these initiatives.

The HIDTA's intelligence group and its two primary enforcement groups are under the operational command of two DEA Assistant Special-Agents-in-Charge. The United States Attorney in Denver serves as Financial Agent for the HIDTA Executive Committee, which is chaired by a DEA Special-Agent-in-Charge. The U.S. Attorneys for Colorado, Wyoming, and Utah have designated experienced federal drug prosecutors to serve as lead HIDTA attorneys in their districts. The lead HIDTA attorney will coordinate the prosecution of HIDTA cases and will help ensure that HIDTA cases receive all available DOJ resources.

In addition to taking a leadership role in implementing the Rocky Mountain HIDTA initiatives, DOJ will seek to create a more synergistic relationship between the Organized Crime and Drug Enforcement Task Force (OCDETF) and HIDTA programs in this region, as well as nationally. The OCDETF program funds case-specific task forces while the HIDTA program funds the administration of large, collocated multi-agency task forces. The Department supports a cooperative approach drawing on the strengths of each program. An example of such an approach has existed in South Florida for some time. There, HIDTA funds supplement OCDETF investigations and maximize the effectiveness of a technologically advanced task force working against the highest level traffickers and money launderers.

*Question.* What are DEA's plans to expand the scope and effectiveness of the Rocky Mountain HIDTA?

*Answer.* Establishment of the Rocky Mountain Intelligence Center is one of DEA's HIDTA priorities. The project is in the initial stages of development, with the assignment of personnel and purchase of basic equipment currently being undertaken. At some point, it will be necessary to develop the center beyond the planned pointer index system, into a multi-faceted system that includes deconfliction and analytical support units, as well as target identification and assessment programs.

DEA supports the development of an effective intelligence center, that allows for the participation of all law enforcement agencies in the Rocky Mountain area and allows DEA to aggressively investigate and dismantle those major trafficking organizations that are having the greatest impact on our Nation. Through the intelligence center, we plan on identifying and targeting those major trafficking organizations which use the Rocky Mountain area as a drug distribution center. It is our intent to focus appropriate investigative resources from all segments of the division to vigorously track these organizations to their supply sources, both domestic and international. Working with contiguous HIDTA's where appropriate, we will concentrate our efforts on each targeted organization until that organization has been dismantled. DEA plans to continue to intensify cooperative efforts among HIDTA participants in order to effectively allocate resources and ensure continuity with ONDCP guidelines, as well as stated regional goals.

The Rocky Mountain HIDTA also plans to develop a new initiative which will provide for a comprehensive demand reduction program. HIDTA members will attempt to develop neighborhood coalitions of Federal, State and local law enforcement representatives, state attorneys, members of public and private sector organizations, and residents of affected communities in order to successfully address drug trafficking and demand issues. DEA has begun this process through discussions with D.A.R.E. of Colorado and the Colorado Federation of Parents. We will begin working with similar organizations in Utah and Wyoming, including the Boys and Girls Clubs of America. This initiative is currently in the early stages of development.

#### SECURITY FOR THE G-7 SUMMIT IN DENVER

*Question.* In June, Denver will host the Group of Seven (G-7) Summit, which will bring together leaders of the seven major industrialized nations and Russia for three days. The provision of sufficient security for world leaders is an important federal interest and, therefore, requires sufficient federal support.

What assistance will the Department of Justice make available for the Denver region to assist with security and other support costs related to the G-7 Summit?

*Answer.* The U.S. Secret Service is the lead Federal agency responsible for security of the G-7 venue sites, protection of visiting heads of state, and the protection of the President. The U.S. Department of State's Diplomatic Security Service is responsible for the protection of other visiting dignitaries. The FBI is responsible for the prevention, detection, and investigation of any terrorist acts affecting the G-7 conference. The FBI will provide assistance to the G-7 by assigning approximately 80 agents and 8 support employees to the FBI Command Center. As of February 28, 1997, the personnel and nonpersonnel costs associated with the G-7 summit on June 20-June 22, 1997 are estimated to be \$742,900.

The INS will provide assistance by assigning approximately 51 employees (11 Detention and Deportation, 29 investigative, and 11 Examinations personnel) to support the G-7 Summit. Total personnel and nonpersonnel costs associated with this Summit are estimated to be \$130,408. Specific equipment needs for this operation have not been finalized. General needs would encompass radios, body armor, batteries, and an assortment of other smaller related articles.

*Question.* Do you believe these current plans are sufficient to support state, county, and local law enforcement in light of the Oklahoma City bombing trial and the many needs of the G-7?

*Answer.* The Department believes the security of the world leaders attending the G-7 summit is of paramount importance. We began preparations in 1996 to ensure the safety of the G-7 participants. The FBI regularly meets with all Denver area law enforcement agencies to share information and intelligence related to the G-7 conference and the Oklahoma City bombing trial. We are continuing to work with the U.S. Secret Service, U.S. State Department, and other Federal, State, and local agencies to ensure a cohesive and comprehensive plan is in place to provide an appropriate response to any terrorist incident involving the G-7 conference or the Oklahoma City bombing trial.

#### DEA AND MEXICO

*Question.* Congress currently is considering the certification or decertification of Mexico under the international drug control program.

According to a news report in the March 2 issue of the San Diego Union Tribune, Mexican authorities are now preventing our DEA agents and law enforcement officers from carrying their weapons into Mexico. In response, the DEA reportedly pulled its agents out of cross-training and intelligence-gathering projects in Mexico along the border.

What is the current status of this dangerous situation?

*Answer.* The activities of DEA agents are guided by joint U.S. and Government of Mexico [GOM] "rules of the game" and the Mansfield Amendment (Public Law 94-329), which provides guidelines to DEA representatives in foreign countries regarding operations, arrests, and overall enforcement activities. These regulations are designed to recognize the sovereignty of respective nations to ensure the safety of agent personnel by limiting their operational exposure.

In Mexico, DEA agents assigned in-country carry firearms based on an informal agreement from the GOM. In addition, the U.S. Ambassador has issued written authority allowing Mexico-based DEA agents to carry weapons.

The United States and GOM have pledged to work to ensure the safety of the United States and Mexican law enforcement officers in the Bilateral Task Forces. As long as U.S. law enforcement agents are not permitted to carry firearms, DEA, FBI, and Customs agents will continue to refrain from travelling into Mexico to the Bilateral Task Force facilities. In the meantime, limited cooperation with Mexican counterparts, however, is being maintained through the visits of Mexican officers to the United States and through occasional liaison meetings between United States and Mexican law enforcement personnel.

*Question.* What steps are the Justice Dept taking with regard to Mexico and its position on our DEA agents and law enforcement officers?

*Answer.* The United States Departments of Justice and State and the U.S. Embassy in Mexico City are engaging in ongoing discussions with their Mexican counterparts to reach a solution that will ensure the safety of U.S. agents.

*Question.* What impact does this stand-off have on DEA's efforts to carry out its anti-drug mission on and over the border with Mexico?

*Answer.* In the DEA's view, until the Bilateral Task Forces are fully staffed, vetted, trained, adequately equipped, funded, and operational, the United States and Mexico will be unable to develop effective investigations and successful, compelling prosecutions in Mexico against the major trafficking organizations.

*Question.* Why would the Administration certify Mexico under the Foreign Assistance Act without first receiving assurances from the Mexican Government that it would allow our DEA agents to carry firearms?

*Answer.* Mexico is an indispensable partner in combatting drug trafficking. In 1996, President Zedillo continued to demonstrate his strong commitment to combatting narcotics trafficking, which he recognizes to be the primary threat to Mexico's national security. In carrying out that commitment, the Government of Mexico continued to strengthen its national counternarcotics efforts.

President Zedillo's Administration took steps to fight corruption within the Mexican government. We applaud President Zedillo's quick response to fire and arrest INCD Chief Jesus Gutierrez Rebollo and several of his deputies amidst corruption

charges and commend President Zedillo for choosing to respond to this situation in a public way, despite the risk of embarrassment to him, his Administration, and his country. The Mexican Attorney General also dismissed a significant number of federal law enforcement officers who had been accused of corrupt practices.

The Government of Mexico extradited 13 individuals in 1996, more than double the number of extraditions in 1995. Among this number, the Mexican Government extradited for the first time a Mexican national and a dual national.

In 1996, the Mexican Government enacted major anti-crime legislation, including a law which criminalized money laundering and a new organized crime law. The organized crime law authorizes a new arsenal of investigative and prosecutorial techniques, including the use of court-authorized electronic surveillance, witness protection, undercover operations, plea bargaining, and prosecution for criminal association, and it further permits asset forfeiture in civil cases. Reforms of the Mexican penal code also included provisions to control the diversion of precursor chemicals for methamphetamine production, and the Mexican Government has worked to restrict the importation of precursor chemicals to a limited number of ports.

Together, the United States and Mexico have worked to establish border task forces whereby U.S. law enforcement agents would work alongside Mexican agents to conduct narcotics investigations and share mutually beneficial investigative information. While obstacles relating to the U.S. agents' status within Mexico have hampered the advancement of the Bilateral Task Force effort, we are hopeful that these issues can be resolved quickly so that the Task Forces may become operational. Announcements from the recent Presidential Summit confirmed that together we needed to assure the safety of both United States and Mexican law enforcement agents.

While we believe that Mexico has attained some significant achievements in 1996, there is more that needs to be done. We feel that the solution lies not in punishing Mexico by cordoning ourselves off from them, but, rather, in working with and supporting President Zedillo's counternarcotics efforts.

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#### QUESTION SUBMITTED BY SENATOR CONRAD BURNS

##### DIVISION OF THE NINTH CIRCUIT

*Question.* Considering the numerous pieces of legislation that have been introduced over the years regarding the division of the Ninth Circuit, I was wondering if you would express what you believe the Justice Department's opinions were regarding the split of this Circuit. And if you believe a split is necessary, how should the future Ninth and Twelfth Circuit appear? If you do not believe a split is necessary, what is your opinion based upon.

*Answer.* The Department of Justice does not, at this time, have a position on either the proposal to split the Ninth Circuit or the variety of proposed divisions of the circuit. Pending in the House is a bill—H.R. 908—to establish a commission to study structural alternatives for the Federal courts of appeals, with a particular focus on the Ninth Circuit. A number of circuit study commission bills are pending in the Senate. If, as the Department expects, such legislation is enacted, the Department will look forward to providing the commission any and all data and perspectives the Department, as the Federal courts only criminal prosecutor and most frequently appearing civil litigator, can provide. If, in the course of our work for and with the commission, we decide to weigh in on the Ninth Circuit split issue, we will after much internal work and discussion and at the appropriate time.

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#### QUESTIONS SUBMITTED BY SENATOR ERNEST F. HOLLINGS

##### CHARLESTON BORDER PATROL TRAINING FACILITY

*Question.* I have been quite impressed with the Border Patrol Training Facility which was established at the former Charleston Navy Base. The officers down there led by Ron Meyers have a can-do attitude and they will train 1,430 new Border Patrol Agents there this year. We still have some minor facility needs, but all that talk of environmental concerns was hogwash and all in all this has been a total success.

My understanding is that the President's request for Treasury includes \$11 million this year for facilities at the Federal Law Enforcement Training Center at Glynn, Georgia, and a similar amount for the next few years. I'm told that FLETC and the Treasury-General Government Subcommittees are already requesting a shut-down plan for Charleston, even though operations have only been ongoing for six months.

What is your assessment of the Charleston Border Patrol training facility?

Answer. The Charleston Border Patrol training facility has succeeded in providing the Immigration and Naturalization Service immediate facility resources to conduct basic training of newly hired Border Patrol agents. These additional resources should allow the Service to deliver the training necessary to achieve its hiring goals for the next three years or longer, if necessary. Through the hard work of many Border Patrol and other Department of Justice employees, these facilities were brought on line within a short time and allowed the Service to begin and sustain a training rate in excess of traditional levels.

Despite different missions, similar functions between previous Navy and current Service tenants allowed the adaptive reuse by the Border Patrol of many Charleston Naval Station structures with minimal alterations. Additional alterations of these existing facilities, however, will be needed to fully meet all Border Patrol facility functional requirements. Because most facilities on the Naval Station are older facilities and had been vacant for several years prior to the Services' occupancy, all current Border Patrol occupied facilities required selective repair and replacement of existing building systems to become operational. Continued minor repair of existing facilities will be needed to sustain operations. Modernization of building systems would provide a more cost-effective facility plant to operate than currently exists; however, if done, the cost-benefit of such a modernization could not be realized for several years. Because they were constructed recently, the outdoor facilities at the Goose Creek Naval Weapons Station should require only minimal repair for the foreseeable future.

Should there be a need to expand the current training mission in Charleston, sufficient opportunity exists at the locations of both the outdoor and indoor facilities to acquire additional facilities. Outdoor training facilities at the Goose Creek Naval Weapons Station are in close proximity to each other and adjacent to undeveloped property where additional facilities could be constructed if required. Likewise, additional vacant facilities adjacent to indoor facilities occupied at the Charleston Naval Station are currently available for repair and occupancy if desired.

*Question.* Isn't this facility required for the foreseeable future whether we add 1,000 Border Patrol agents per year as is authorized in the 1996 Immigration bill or 500 per year as you have proposed in this budget?

Answer. The INS needs a place to train Border Patrol agents, both now and in the foreseeable future. With the growth that INS has experienced in recent years, the Service will need to train Border Patrol Agents in response to both attrition, as well as any new agents added in the appropriations process in the future. If the Federal Law Enforcement Training Center at Glynco, Georgia cannot accommodate our training requirements, INS will continue to rely on the Charleston Border Patrol Training Facility to meet its needs.

#### MOUNT PLEASANT ILLEGAL ALIENS

*Question.* For the past five years, the administration has made the Southwest Border region its priority for INS. Five thousand four hundred additional INS positions have been added from California to Texas. I understand that Mexico is dominated by crime cartels. But, the rest of the country has crime too.

Last Summer, our local police in Mt. Pleasant, South Carolina, near my home arrested five individuals when they were caught speeding on the Cooper River Bridge and then the police found open alcohol containers in the car. On further investigation, the police ascertained that these individuals were illegal aliens. They contacted INS, the nearest office of which is in Charlotte, North Carolina, and were told to let the aliens go. They weren't "criminal" aliens and so INS wouldn't get involved. This unfortunate event got the Department of Justice and INS a lot of bad press in my backyard.

Is it normal practice for INS to only worry about criminal illegal aliens?

Answer. During the summer of 1996, the Mt. Pleasant, South Carolina Police Department (MPPD) contacted the Charlotte, North Carolina, INS office. The Charlotte office is a suboffice of the Atlanta, Georgia, INS District Office, which also serves the States of Alabama, Georgia, South Carolina, and North Carolina. MPPD requested that INS assume custody of the five alleged illegal aliens that they had arrested for traffic violations. As you pointed out, Charlotte is the closest INS enforcement office to the MPPD. The office is approximately 200 miles from Mt. Pleasant, South Carolina. INS special agents did not have information indicating whether or not the MPPD was arresting the subjects or had lodged criminal charges on which to detain them for the five to seven hours it would have taken INS special agents to respond. Criminal aliens are a higher priority than aliens not convicted of crimes. Had we known that the MPPD was charging the suspects with state violations, the INS Charlotte Office would have had time to respond and to interview

the suspected illegal aliens. The INS does not have the resources to respond to every alleged illegal alien arrest.

Section 133 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 authorizes the Attorney General to enter into written agreements with state and local law enforcement to allow them to function as immigration officers in relation to the investigation, apprehension, or detention of aliens in the United States (including the transportation of such aliens across State lines to detention centers). We are currently drafting regulations and a Memorandum of Understanding to implement the provisions of this section.

*Question.* Now in last year's Immigration Act, Congress required that states have a minimum of 10 INS personnel per state, so we will have 3 special agents in Charleston. It is my hope that this INS debacle will not be repeated.

But, I think the Justice Department needs to keep in mind that there are 50 states, and illegal immigration is not confined to Border states. Alien detention and deportation issues are important to our constituents too.

*Answer.* We understand and appreciate your concern and those of your constituents regarding the illegal alien problem in the State of South Carolina. We are committed to enforcing the immigration laws throughout the United States. The illegal entry of aliens into the United States is not only a border problem, it also affects communities across the country. We take seriously our responsibility for enforcing all immigration laws and regulations that apply to both criminal aliens and administrative violators. In the past few years, we have strengthened enforcement personnel and technological resources at the southern border; however, we have also added hundreds of personnel in the interior of the United States. We believe the added resources will help enforcement efforts in the state of South Carolina.

#### FINGERPRINTS/IMMIGRATION

*Question.* There has been a great deal of controversy over the failure of the INS and the FBI to conduct fingerprint checks of immigrants applying for citizenship. Apparently, as many as 180,000 immigrants were naturalized without checks to ensure they do not have criminal records. And it appears 71,000 got citizenship even though they had criminal records.

You have had a chance to review this situation. Is it clear yet why this happened? Was it simply miscommunication between the INS and the FBI?

*Answer.* The INS naturalized over one million citizenship applicants between August 31, 1995, and September 30, 1996. Out of this group, it appears that approximately 180,000 persons may have been naturalized without an FBI fingerprint clearance; however, the FBI did conduct name-checks on 113,126 of these people. These name checks were conducted against the FBI's full Criminal Justice Information System (CJIS) database. Because approximately 66,000 citizens do not appear in FBI billing records, it is not clear whether the FBI conducted any type of criminal background check before they were naturalized. The INS has not yet reviewed the files for these cases, and it is not clear how or why this has happened. However, INS has taken measures to ensure that a criminal background check has been conducted on all citizens before they are naturalized.

Approximately 71,000 persons with FBI arrest records (Idents) were naturalized during this same period. None of these citizens belong to the subset of approximately 66,000 citizens who may not have had any type of FBI clearance. It should be noted that almost half of the Idents were administrative arrests, and not criminal. Further, not all arrests result in convictions, and not all convictions would render an applicant ineligible for naturalization. INS' Naturalization Review Team in Lincoln, Nebraska, under the oversight or involvement of the Department of Justice, KPMG Peat Marwick, the Executive Office for Immigration Review (EOIR), the Inspector General, the General Accounting Office, and several Congressional Subcommittees, is reviewing the naturalization decisions for all persons who were naturalized between August 31, 1995, and September 30, 1996, and who have felony or potentially disqualifying misdemeanor arrests.

As of May 14, 1997, INS had reviewed 15,536 of these files and determined that original decisions in 10,030 (64.5 percent) of the cases were proper (i.e., statutorily defined residency and good moral character criteria were met by the applicant), that 296 (2 percent) of the applicants were presumptively ineligible (presuming an applicant could not produce evidence that a disqualifying conviction had been overturned on appeal), and that 5,210 (33.5 percent) case files did not contain sufficient information upon which to validate the original adjudication and, therefore, would need to be returned to the appropriate INS field office for further action. This case review effort is still underway, and the Department will report its findings when the re-

view is completed. For those individuals found to be incorrectly naturalized, INS intends to initiate proceedings to revoke citizenship.

The FBI and the INS have had significant difficulty matching records. This is primarily because each agency has its own numbering or case identification system. The FBI assigns a Process Control Number (PCN) to fingerprint cards (FD-258) received and placed into its Billing Database, while the INS assigns an Alien File or "A-Number" to aliens when they immigrate to the United States. It is very difficult to locate an INS record in the FBI Billing Database without using the FBI-assigned PCN number. The FBI does not assign PCN numbers to all fingerprint cards submitted by the INS. Only those fingerprint cards that the FBI places in its Billing Database are assigned PCN numbers.

In addition, neither the FBI nor the INS possess databases designed to track the fingerprint clearance process. As a result, both agencies have had to rely upon existing databases designed for other purposes. The FBI relies primarily upon its Billing Database, while the INS relies upon its Central Index System (CIS). Some program modifications have been made to enhance the ability of these systems to identify arrest records of individuals naturalized.

The overwhelming majority of INS-submitted fingerprint cards are recorded in the FBI Billing Database. Fingerprint cards that are rejected by the FBI upon receipt because they lack biographic and/or other information are not recorded in the Billing Database. The names of individuals whose fingerprint cards are rejected later because the prints are unclassifiable are run through the FBI's Criminal Justice Information System (CJIS) Database. If an arrest record is located in the CJIS Database, the IDENT (rap sheet) is returned to the INS with the unclassifiable fingerprint card. Unclassifiable fingerprint cards are also returned to the INS when no arrest record is located in the CJIS Database, but the response is not considered to be a NON-IDENT.

*Question.* What can we do to go back and check these individuals? I mean how is Justice going to find criminals that were naturalized?

*Answer.* As stated above, INS is reviewing the case files for those individuals known to have had felony or potentially disqualifying misdemeanor arrests (a subset of the 71,000 idents). In addition, INS has recently conducted name checks against the FBI's full CJIS database for the 66,000 individuals that were not shown in the FBI billing records. This has produced approximately 9,000 candidate idents. If any of these individuals are confirmed as being naturalized during the period in question, their case files will be reviewed if the rap sheets indicate felony or potentially disqualifying misdemeanor arrests.

*Question.* What steps is the Justice Department taking to ensure this doesn't happen again?

*Answer.* The INS has implemented a series of initiatives to improve and strengthen the U.S. naturalization program. They include the following: (1) strengthened the current citizenship process to ensure that no individual is naturalized without the verified completion of a fingerprint check by the FBI; (2) hired the KPMG Peat Marwick, LLP, management firm to oversee an INS audit of naturalization cases from September 1995 through December 1996 (the DOJ Office of the Inspector General and the GAO will monitor this audit); (3) instituted additional Service-wide quality assurance steps to ensure that all procedures are being consistently followed throughout the naturalization process in all INS offices; and (4) initiated a comprehensive re-engineering of the naturalization program with the assistance of the Coopers Lybrand consulting firm.

The objectives of the project are: to ensure the integrity and security of the naturalization program; to determine applicants' eligibility for naturalization consistently and accurately under the law; to enhance the overall working experience of employees; to utilize human, technological and fiscal resources more efficiently and productively; to develop a customer-oriented workforce and service-oriented culture while ensuring that legal standards and protocols are in place and maintained; to develop and implement an effective system of standards, measurements and accountability for performance and results that can be systematically collected and reported; and to improve the effectiveness of internal and external communication.

The reengineering project will examine every facet of the naturalization process including the submission of fingerprint cards to the FBI as part of the criminal background check. The contractors are being asked to explore technological solutions that will complement the process redesign efforts.

In addition to the above, the Attorney General recently established the Fingerprint Coordination Group. I chair monthly meetings of the Group, which consists of high level officials from INS and the Federal Bureau of Investigation (FBI). The Group is dedicated to improving the processing of INS fingerprint cards, the largest single customer of the FBI's Criminal Justice Information Services Division.

Through exchanges of information regarding each organization's processes, sharing of technical expertise, increased reliance on automation, and assignment of personnel to the other agency's facilities, these two organizations are identifying ways to expedite the criminal background checks performed as part of the naturalization application process and ensure that the INS is provided with accurate and timely information on each applicant. The group's efforts will ensure an integrated approach to all process improvements and automation efforts. The resulting improvements will help both INS and FBI reduce current workload backlogs.

Under the Fingerprint Coordination Group, I am establishing the Joint Fingerprint Processing Working Group. Within the next 90 days, this group will present its findings and recommendations regarding:

(1) immediate solutions, such as improving the quality of print submissions to the FBI, ensuring the authenticity of submitted prints, and ensuring consistency of the A-number shown on both the FD-258 and N-400;

(2) short-term solutions, including an examination of the impact of the FD-258 tracking system and the Machine Readable Data process on INS-FBI matching efforts, and improvements to the Designated Fingerprint Services Program, including its training and quality assurance elements; and

(3) long-range plans, concerned principally with the transition from manual to electronic print-taking and checking.

*Question.* You know there is a bit of *deja vu* in all this. In 1994, the INS proposed to stop making fingerprint checks through the FBI altogether. INS claimed this would save \$3 million. Senator Byrd and I wrote you protesting this action, and you directed INS to maintain the fingerprint check system.

One thing is unclear however. if you read the record of our hearings in 1994, we expressed concerns that the INS system of taking the fingerprints—which were then sent to the FBI—was subject to fraud. Anyone could take the prints and then send them in to INS. The Department told us that it had created a fingerprint working group including the FBI, INS and the Inspector General.

Now, four years later, it appears we still have the same problem. Why?

Answer. Through the recent implementation of the Designated Fingerprint Service Program, the INS created an innovative way to conduct business in this area. However, the rule making process required an extensive number of internal and external reviews since the proposal affected public and business entities. Before the proposed regulation was published, reviews were conducted both within the INS and outside the INS by DOJ and OMB. Following publication of the proposal, public comment was considered and responded to and the procedure again reviewed. This process led to the publication of a final order on June 4, 1996. Following publication, an additional ten months was required to allow entities the opportunity to review the proposal, respond if interested in conducting business and be trained as required.

#### NEW STATE AND LOCAL ASSISTANCE PROGRAMS

*Question.* Your budget includes two new state and local grant programs—\$49 million for a new Violent Youth Court Program and \$95 million for a new state prosecutors program to target gang crime. Could you provide more specifics on these programs. For example, how many state prosecutors do you foresee the Federal Government providing and for how long will such assistance continue?

Answer. Last year, for the first time in seven years, the national juvenile violent crime and murder arrest rates went down. While these signs are certainly promising, juvenile crime rates are still unacceptably high in many cities, towns and neighborhoods. We can and must do more. The establishment of these two new State and local grant programs—the Violent Youth Court Program, and the Prosecutorial Initiatives Targeting Gang Crime and Violent Juveniles Program—are essential to the Administration's commitment to mount a full-scale assault on juvenile crime in America. This commitment is comprised of four essential elements that are designed to target gangs and violent juvenile criminals, keep the nation's children gun and drug free and on the right, law-abiding track, and reform the juvenile justice system. Furthermore, these programs will benefit State and local communities by preventing and attacking gang-related and violent juvenile crime at the community level, providing communities the tools and resources to identify and target their juvenile crime problems.

The Violent Youth Court Program will provide grants to state and local communities to plan, develop, implement, and administer specialized, court-based activities focusing on more effectively addressing violent and non-violent youth offenders as they move through the justice system. Communities will have the opportunity to request funding for programs that meet their needs. Funds will be used for innovative

initiatives that will enhance and expedite judicial activities related to increasing incidents involving youth violence, allowing better management at the community level of juvenile violent offenders. These initiatives may include the establishment of juvenile gun courts that target young firearms offenders; juvenile drug courts that will provide continuing judicial supervision over young offenders with substance abuse problems (similar to the integrated administration used in the adult Drug Courts program); courts of specialized or joint jurisdiction; and other enhanced strategies aimed at improving adjudication of juvenile offenders including programs involving the courts, prosecutors, public defenders, probation officers and correction agencies. These special courts have a certain coercive power to correct behaviors and thus improve public safety: court-imposed graduated sanctions and the courts' ability to hold offenders accountable are effective in reducing the criminal behavior of those under their jurisdiction.

The Prosecutorial Initiatives Program will provide direct funding to prosecutors' offices to support new initiatives targeting gangs, gang violence, and other violent juvenile crime, including hiring new gang prosecutors, buying equipment, and conducting state-of-the-art training. Under this program, the Federal government would provide funding of \$100 million per year over a two-year period, at which time the local jurisdictions would take over. During the two-year period, prosecutors would set up the infrastructure needed to pursue, prosecute, and punish dangerous gang members and other violent juvenile offenders for their crimes. More specifically, the program is designed to facilitate better cooperation and coordination between prosecutors and school officials, probation and parole officers, youth and social service professionals, and community members in order to increase identification of high-risk juveniles and, ultimately, speed the prosecution of violent juvenile offenders. Since each jurisdiction will determine how their community spends the funds received, including how many new prosecutors are needed to accomplish these goals, communities essentially control the decision-making process.

#### HEPATITIS C IN PRISONS

*Question.* The Committee has become aware of the potentially serious problem of Hepatitis C infections among prisoners in the country including Federal prisoners. It is our understanding that the Infectious Disease Coordinator at the Federal Bureau of Prisons is aware of this problem which can affect not only prisoners but prison employees who may be exposed to infections during normal prison contact with infected individuals. Could you tell the Committee your view of the seriousness of the problem in the Federal Prison System and describe any steps currently being taken to deal with Hepatitis C among Federal prisons?

*Answer.* Studies from state correctional systems indicate a high prevalence of Hepatitis C infection ranging from 30 percent to 40 percent among incarcerated populations. The majority of BOP inmates with Hepatitis C infection have acquired it prior to incarceration through injection drug use. Hepatitis C is transmitted primarily through exposure to blood and not by food or routine contact. Occupational-related transmission has been uncommon. BOP uses universal precautions to prevent exposure to blood borne pathogens such as Hepatitis C. The use of barrier methods during known or anticipated exposures to blood or bloody fluids is highly effective in preventing infection with the Hepatitis C virus. BOP addresses the issue of Hepatitis C infection in the following ways: (1) training of BOP employees upon hire and annually on blood borne pathogen occupational exposure, including the transmission of Hepatitis C virus and the effective use of universal precautions; (2) provision of protective equipment for BOP staff to prevent exposure to blood and blood-contaminated fluids; (3) counseling and medical referral for all BOP staff with occupational exposures to Hepatitis C virus; (4) clinically-based testing of inmates with a history of risk factors for Hepatitis C infection, and (5) promulgation of treatment guidelines for the medical management of inmates with Hepatitis C infection.

*Question.* We have been told that the Bureau does not currently have a policy requiring blood testing and treatment for all prisoners. This seems unfortunate since mandatory testing could be useful in identifying not only Hepatitis C but also HIV/AIDS. Could you confirm for the Committee the Bureau's current policy regarding testing for prisoners.

*Answer.* BOP does not require mandatory screening of inmates for either Hepatitis C or HIV/AIDS. Inmates with a history of injection drug usage, blood transfusions prior to 1990, or other risk factors for Hepatitis C or HIV/AIDS are tested upon prison entry and through clinical evaluations. BOP has the following HIV testing policy for inmates: (1) random mandatory testing of 10 percent of BOP inmate population annually with a seroprevalence for HIV infection of 1.3 percent documented for 1996; (2) serial annual testing of a cohort of inmates who have entered

BOP during one selected month each year, and (3) mandatory HIV testing of inmates upon release to the community.

#### COPS

*Question.* Recent news reports say that you disagree with the Administration's position on COPS and the Local Law Enforcement Block Grant. Is that so?

*Answer.* There is no disagreement between me and the Administration. In DOJ's initial budget request I asked for \$1.4 billion in funding for COPS—enough to keep us on track for funding 100,000 additional community police officers by 2000—and continued funding for the local law enforcement block grant. Subsequently, however, we decided that—given our overall budget constraints—it would be more effective to target limited funds toward juvenile justice and youth violence initiatives. I asked for a package that reflected those goals. The budget we transmitted to Congress includes, in addition to the COPS funding, a youth violence and juvenile justice package that includes a combination of formula block grant and discretionary funding.

As I testified before the House, I believe the proposed funding for my Department laid out in the President's budget request is a strong, flexible and balanced package. I want to work with you and this Subcommittee to develop the very best ideas to improve this proposal and achieve your common goals of putting cops on the street, attacking gangs and youth violence, supporting local law enforcement and funding solid and proven prevention programs, like those in Boston and elsewhere that have been so successful at preventing crime by young people.

#### EFFECTIVENESS OF THE DIAP

*Question.* In 1993, Vice President Gore recommended consolidating the Federal Bureau of Investigation (FBI), Drug Enforcement Administration (DEA) and the Bureau of Alcohol, Tobacco and Firearms (ATF). Instead the Justice Department created the coordinating position of the Director of Investigative Agency Policy or DIAP. The DIAP is supposed to oversee common policies, stress "jointness" in operations, and reduce redundancy. Director Freeh was appointed to this position four years ago.

Director Freeh's testimony before the House Appropriations Committee was televised last week, and he didn't appear too knowledgeable about the Immigration and Naturalization Service and investigative agency policies on fingerprints. And, I look at your budget and we have \$32 million to complete the new \$130 million FBI laboratory at Quantico, we have a new \$25 million multi-year request to rebuild DEA's own laboratories, and in the Treasury appropriations bill we now have a \$55 million new ATF laboratory proposed. And, across the country and in my home state, the FBI is building its own new secure offices that do not include the DEA.

What is your assessment of the effectiveness of the DIAP?

*Answer.* On November 18, 1993, I established the Office of Investigative Agency Policies (OIAP) to increase efficiency within the Department of Justice (DOJ) and to coordinate specified activities of the Department's criminal investigative components. FBI Director Louis J. Freeh was selected as the first Director of Investigative Agency Policies (DIAP) from among the principals of the participating OIAP agencies. The DIAP was charged with advising the Deputy AG and I on criminal investigative policies, procedures, and activities that warrant uniform treatment or coordination.

Shortly after the appointment of Director Freeh as the DIAP, an Executive Advisory Board (EAB) was established to assist in the development and analysis of issues suitable for the OIAP review. The EAB consists of officials drawn from the ranks of the OIAP member agencies. These agencies include the United States Marshal Service, Immigration and Naturalization Service, Drug Enforcement Administration, Federal Bureau of Investigation, and the DOJ Criminal Division. Although they are not members of the EAB, other DOJ components, including the Bureau of Prisons, Attorney General's Advisory Committee, and the DOJ Office of the Inspector General, participate in many of the OIAP's efforts. Senior level employees from the member agencies provide staff support to the DIAP and the EAB in fulfilling the mission of the OIAP. A Chief of Staff appointed by the DIAP directs staff activities and serves as liaison among the OIAP staff, DIAP, EAB, and other organizations.

Over the past three years, the OIAP has proven to be an effective policy making and coordinating body within the DOJ as well as with other Federal agencies. Among the achievements of the OIAP is the development of a number of wide-ranging law enforcement policies, including a uniform Departmental policy on the application of deadly force; use of and payments to informants; and disclosure of im-

peachable information. An item currently under OIAP review is a Violence Against Women Act/Firearms Policy.

The OIAP has proven to be an effective means to promote interagency cooperation. To date, the results are unprecedented and greatly benefit our Nation's law enforcement officers and enhance the ability to combat criminal elements. At the OIAP, partisan agency interests have been greatly diminished and interagency cooperation has become the norm.

*Question.* Why can't we consolidate Federal crime laboratory facilities? Do we really need separate FBI, DEA, and ATF laboratories? I mean how different is ATF's explosive forensic efforts from the FBI's?

*Answer.* In October 1995, at the request of Deputy Attorney General Jamie Gorelick, FBI Director Louis Freeh directed the Office of Investigative Policies (OIAP) to examine the consolidation of the FBI, DEA, and INS laboratories. OIAP Resolution 11 served as the guideline for this examination.

Resolution 11 established the Interagency Laboratory Working Group (ILWG) to examine the feasibility of consolidating the Immigration and Naturalization Service Forensic Document Laboratory (INSFDL) and the Drug Enforcement Administration Special Testing and Research Laboratory (DEASTRL) into the soon to be constructed FBI Laboratory facility. After a three month study, ILWG unanimously agreed that collocation and consolidation of the INSFDL and DEASTRL laboratories into the new FBI Laboratory would not be cost effective and would not result in any measurable cost savings to the Federal Government. Also the ILWG believes that, under consolidation, the INS and the DEA would not be able to maintain the same quality of service that they are presently providing their respective agencies.

In the recommendation of the ILWG to the DIAP, the report states "All members of the ILWG are in agreement that the consolidation would provide minimal savings in the sharing of equipment. There would be no savings in terms of personnel costs through consolidation and that there would be minimal savings in terms of space considerations \* \* \*." In addition, it was the position of the ILWG that "\* \* \* it is not possible under consolidation, to maintain the same important services to the DEA and INS by their respective laboratories, if such consolidation were to take place."

The FBI and the BATF both conduct explosives examinations; however, they differ in that the FBI conducts a greater variety of forensic examinations. Accordingly, the FBI and the BATF laboratories employ different examination protocols. In addition to the component examination and explosives residues examinations, which are conducted by both laboratories, the FBI Laboratory also has the unique capability of conducting additional specialized examinations in the support of explosives cases. These entail such things as forensic metallurgical examinations, hair and fiber examinations, elemental analyses, nuclear DNA and mitochondrial DNA examination, etc.

The differences in the examination protocols could be easily addressed with the adoption of one new set of examination protocols promulgated through the formation of a Technical Working Group. This has been done in DNA, Latent Fingerprint, and Material Analysis. A Technical Working Group in the area of explosives examinations is being formed in the near future to address this and other issues.

#### NATIONAL ADVOCACY CENTER

*Question.* Your budget includes \$8.3 million to open the National Advocacy Center in April 1998. The Center will be a skills training center for U.S. Attorneys, other Justice Department attorneys and State and Local prosecutors. It will train approximately 15,000 personnel, including over 3,100 State and Local prosecutors. The creation of this institute realizes the fulfillment of the recommendation of Attorney General William French Smith's Task Force on Violent Crime made back in 1981. You've been there as a Local prosecutor in South Florida and you know the need for training and for joint Federal/State training. Could you explain your view of the need for the Advocacy Center to the Subcommittee?

*Answer.* Our national law enforcement priorities are directly tied with our State and Local partners. In order to ensure that these priorities are addressed in a comprehensive manner, we are committed to conducting cooperative law enforcement training. I believe that the best place to conduct this training is at the National Advocacy Center (NAC).

The NAC will provide, for the first time, joint training programs for Federal prosecutors, agency attorneys and Local prosecutors in areas where they have mutual interests, as well as a state-of-the-art facility for conducting these training programs.

The NAC has been specifically designed as a training facility for prosecutors. As it currently operates, the Office of Legal Education (OLE) conducts trial advocacy training in converted office space here in Washington, DC, and a great majority of its specialty training at hotels in cities throughout the nation. It is very difficult to provide quality education in makeshift accommodations. The NAC will allow us the flexibility to increase the quality and quantity of training using the additional capacities afforded by the facilities and technologies available at the NAC. These include six lecture halls, ten mock courtrooms, a conference center and a computer training facility, all equipped with the latest technology. We will be able to produce and edit our own videotape programs and also perform distance learning programs from the facility.

Since 1991, when the Congress appropriated the monies to build this facility in Columbia, South Carolina, we have engaged in a collaborative effort with the National District Attorneys' Association (NDAA). A cooperative agreement, which formalized our working relationship, was executed between the NDAA and the DOJ on July 22, 1996. With this agreement in place, the enormous talent of our Federal, State, and Local prosecutors will be shared in what, I believe, will be the best cooperative effort between the Federal government and the States in many years. Presently Federal, State and Local prosecutors are working closer together than ever before. Many State and Local prosecutors are now cross-designated as Federal prosecutors and vice-versa. With a nationwide corps of Federal, State and Local public-sector attorneys as a base, we can select the best and the brightest instructors to cross-train the students of the NAC. Our plan is to work with NDAA to enhance both of our trial advocacy courses, as well as, develop and present joint courses on areas such as health care fraud, telemarketing fraud, violent crime, methamphetamine labs, drug prosecutions, and juvenile justice issues. The NAC will facilitate our joint ability to focus on priority legal training needs on a national scope.

At the present time, the OLE annually trains approximately 11,000 individuals. This total includes Assistant United States Attorneys (AUSA), Department of Justice Trial Attorneys, United States Attorneys' offices (USAO) and Department paralegal/support staff, Executive Branch attorneys, and State and Local prosecutors. With the opening of the NAC, we plan to increase the number of people trained to 15,000 annually including approximately 3,100 State and Local prosecutors.

The NAC is currently under construction and is scheduled for completion in January, 1998. We are presently scheduled to begin classes at the NAC in the spring of 1998. We have requested a budget increase in 1998 of \$8.3 million to cover the cost of moving the OLE to the NAC, enhancing our training programs and conducting training of State and Local prosecutors. These increases can be broken down into three categories: Start up and operations (\$2,868,000); Program enhancements (\$3,369,000); and National District Attorneys' Association (NDAA) operations (\$2,097,000).

With your continued support, I believe that the Department of Justice in partnership with the NDAA, will continue to operate a premier legal training institute for Federal, State and Local prosecutors at the National Advocacy Center.

#### DISTRICT OF COLUMBIA SITUATION

*Question.* The crime situation here in our nation's capital is out of control. We've just recently had two police officers murdered.

The Department of Justice U.S. Attorneys serve as the prosecutor here. Your budget proposes an additional 55 attorneys for criminal prosecutions here, an increase of 26 percent. You've got my support for this initiative. I was wondering if you could discuss it more fully.

*Answer.* The United States Attorney's Office for the District of Columbia (USAO/DC) is unique among U.S. Attorney's Offices nationwide in its dual responsibility for prosecution of violations of Federal criminal statutes in the United States District Court and violations of the District of Columbia Code in the Superior Court of the District of Columbia. This Office prosecutes most violations of the D.C. Code committed by adult offenders. (Other violations of the D.C. Code, including offenses committed by juveniles, are prosecuted by the Office of Corporation Counsel for the District of Columbia.) The practical effect of this jurisdictional scheme is that the U.S. Attorney for the District of Columbia acts as both Federal prosecutor and local District Attorney for this district.

As the primary local prosecutor in the District, we handled over 26,000 cases in Superior Court in 1996, ranging from shoplifting and prostitution to murder, kidnapping, child abuse and sex crimes. Criminal charges were filed in approximately 17,000 of those cases.

There are currently 211 attorneys assigned to the Superior Court Division of the Office to handle those cases. The request for 55 additional attorney positions for the United States Attorney's Office for the District of Columbia includes much needed support for our efforts to adequately address our responsibilities in Superior Court. The infusion of new staff will allow for more manageable caseloads (attorneys in some sections handle nearly 200 cases at one time and schedule five to seven trials each week) and more thorough preparation of cases by Superior Court attorneys, as well as expansion of the work of the Division in a number of new initiative areas including, community prosecution, domestic violence, Operation Ceasefire, gang prosecutions and "cold case" murder investigations.

In addition, this Office prosecutes a number of juveniles charged with homicide who are certified for prosecution as adults.

#### *Community Prosecution*

The number one priority for the criminal side of the USAO/DC in 1998 is the office-wide adoption of a community prosecution model. We established the Community Prosecution pilot project (CP) in the Fifth Police District on June 3, 1996. Nineteen Assistant United States Attorneys work together as a team to handle the investigation and prosecution of both local and Federal criminal matters occurring in the Fifth District (5D). In addition, two prosecutors are located in an office in the 5D police headquarters to be easily accessible to the police in the District and to the neighborhood's residents.

We believe that the project has been a great success. The CP project has done a remarkable job of focusing a variety of resources on a particular geographic area of the city in a new and dynamic way. We also believe that our cooperative efforts with the 5D community have begun to reap real rewards. We intend to expand CP to each of the seven police districts in the District of Columbia, and have established a committee to plan how and when to implement this model office-wide. However, the CP model is very resource intensive. Rather than processing criminal cases in an "assembly-line" fashion, this model contemplates careful review of each case in the larger context of the affected community. Thus, final implementation of a city-wide community prosecution approach is dependent upon enactment of the requested increase for 1998. The budget requests 39 new Assistant positions specifically for expansion of the CP project.

#### *Domestic violence*

Each year, over 6,000 criminal cases involving some form of domestic violence are referred to the USAO/DC for prosecution. These cases involve not only violence against women, but spousal and partner abuse, intrafamily child abuse, sibling abuse and elder abuse. The U.S. Attorney's Office and the D.C. Superior Court, along with numerous other organizations and agencies, signed a Domestic Violence Plan which envisions a multidisciplinary and comprehensive approach to combating domestic violence in the city.

Toward that end, this Office has created a Domestic Violence Unit within the Superior Court Division which will be staffed with trained, dedicated personnel who will vertically prosecute all of the Office's domestic violence cases, including violations of the Violence Against Women Act. The Unit is currently staffed by four misdemeanor-level prosecutors who carry caseloads of approximately 200 cases pending trial. The Office has delayed expanding the unit to include felony cases because of staff shortages. Approximately 20 felony domestic violence cases come to the Office every month. The fiscal year 1998 President's Budget request includes an additional five prosecutors to specialize in domestic violence. This will allow the Office to begin vertical prosecution of felony cases and to accommodate the monumental increase in misdemeanor domestic violence prosecutions that has developed over the last year.

#### *Operation Ceasefire*

This comprehensive law enforcement initiative established by the USAO/DC with the Metropolitan Police Department (MPD) and the Bureau of Alcohol, Tobacco and Firearms (ATF), is designed to significantly reduce the occurrence of gun-related violence within the District of Columbia. The Ceasefire partners have joined forces to: decrease the number of illegal firearms on the streets of the District of Columbia by increasing efforts at interdiction and seizure; increase the penalties for firearms related offenses; improve the intelligence base for law enforcement by requiring a debriefing as a condition precedent to plea negotiations; and educate young people about the dangers associated with firearms through outreach programs in schools and other organizations.

Since the inception of Operation Ceasefire, firearm seizures have increased to record levels. In addition, legislative initiatives have increased the statutory penalty

for pistol possession from a misdemeanor to a felony. Due to inadequate staffing at the U.S. Attorney's Office, however, the initiative has fallen short of its goals with respect to creating an intelligence bank and educating young people about the destructive power of firearms. The fiscal year 1998 President's Budget requests three additional attorneys for this effort.

#### *Gang Prosecutions*

We have determined that the increase in violent crime in the District of Columbia over the past decade is due largely to the rise of gangs and gang-related violence. Gang investigations and prosecutions constitute a highly specialized area of law enforcement. Such investigations are extremely complex, resource intensive, and long term. Effectively investigating and prosecuting a violent gang often requires the efforts of at least one full-time attorney on that project, working with an investigative team of local and Federal law enforcement officials. The fiscal year 1998 President's budget proposes the addition of five attorneys specifically for this purpose. Those resources would be used to create a Gang Prosecution Unit or to assign gang specialists to each of the Office's geographically based sections, if we move to office-wide implementation of the Community Prosecution model. They will be tasked with the identification, analysis, investigation, and prosecution of violent gangs throughout the City. We believe that, with these resources, we can target twelve of the most violent gangs in the District of Columbia for prosecution and make headway into combating the violence spawned by gang activity.

#### *Unsolved Homicide Case Investigation Squad*

Over the past ten years, Washington, D.C. has experienced a tremendous increase in violent crime, and, for several years, has had the highest per capita murder rate in the country. Less than 60 percent of these murders have actually been solved by arresting and prosecuting a suspect. To work on the problem of "cold cases," the FBI and the MPD created the "Cold Case Squad" consisting of ten FBI agents and eight MPD homicide investigators whose mission is to analyze, investigate and solve old, difficult cases. This squad has been enormously successful in solving these cases and, in the process, has generated an enormous amount of investigative work to be handled by prosecutors in the Office's Homicide Section. However, we have been unable to devote sufficient resources to the initiative to allow us to play a more integral role in the investigation and prosecution of these cases. We believe that the involvement of a prosecutor is essential in order to secure cooperating defendants, an essential element in many of these prosecutions, and to facilitate greater cooperation between Federal and local law enforcement agencies in this important endeavor. The fiscal year 1998 President's Budget request includes the addition of three attorneys to the staff of this Office to allow for the creation of a "Cold Case" Squad for this purpose.

*Question.* On the same topic, where do we stand relative to the Justice Department taking over the city's prison system? Isn't that the option that the President has come out in support of?

*Answer.* Under the President's National Capital Revitalization and Self-Government Improvement Plan, the Federal Government would take responsibility for housing the District felons sentenced to a term of incarceration. In preparation for this shift, Representatives of the Office of Management and Budget (OMB), Department of Justice (DOJ), and District of Columbia (D.C.) Government are developing the Memorandum of Understanding (MOU) between the Federal Government and the Government of the District of Columbia on criminal justice matters. The MOU will set forth the expectations and responsibilities relating to the changes proposed in the District of Columbia criminal justice and judicial system.

#### LORTON

*Question.* Is the proposal for the Bureau of Prisons to operate the Lorton complex or build new prisons, and how would this be financed?

*Answer.* Recent Congressionally mandated studies confirmed that most of the facilities at the Lorton Complex have outlived their life-cycles and need to be replaced, but several others at Lorton remain in good working condition and can be re-used. The proposal permits both renovation of a small portion of the Lorton Complex and construction of new facilities at Lorton and other locations as necessary. The absorption of sentenced D.C. inmates would increase the BOP population by approximately 10 percent. However, our system is critically overcrowded in its medium and high security facilities, and 72 percent of the D.C. felons require medium or high security facilities. Thus, the BOP could absorb sentenced D.C. felons only after Lorton is renovated and new facilities are constructed at Lorton and other locations.

The renovation and new construction costs would be financed through new resources provided by Congress and operations funding will be requested for BOP during the transition period.

SUBCOMMITTEE RECESS

Ms. RENO. Thank you.

Senator GREGG. Thank you very much, Madam Attorney General.

Ms. RENO. And I will call and make an appointment to come up and talk to you about terrorism.

Senator GREGG. Great.

Ms. RENO. Thank you.

Senator GREGG. The hearing is recessed.

[Whereupon, at 11:40 a.m., Wednesday, March 12, the subcommittee was recessed, to reconvene subject to the call of the Chair.]

**DEPARTMENTS OF COMMERCE, JUSTICE, AND  
STATE, THE JUDICIARY, AND RELATED  
AGENCIES APPROPRIATIONS FOR FISCAL  
YEAR 1998**

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**THURSDAY, MARCH 13, 1997**

U.S. SENATE,  
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,  
*Washington, DC.*

The subcommittee met at 1:52 p.m., in room S-146, the Capitol,  
Hon. Judd Gregg (chairman) presiding.

Present: Senators Gregg, Stevens, Domenici, Inouye, Bumpers,  
and Lautenberg.

**DEPARTMENT OF COMMERCE**

**SECRETARY OF COMMERCE**

**STATEMENT OF HON. WILLIAM M. DALEY, SECRETARY**

**ACCOMPANIED BY:**

**RAYMOND G. KAMMER, JR., ACTING CHIEF FINANCIAL OFFICER/  
ASSISTANT SECRETARY FOR ADMINISTRATION  
MARK E. BROWN, DIRECTOR, OFFICE OF BUDGET**

**OPENING REMARKS**

Senator GREGG. This is great. The Secretary is early, and that is wonderful. We appreciate that. I would hold the hearing pending the arrival of Senator Hollings, but I understand he is on the floor, so he probably will not be coming, in any event, until later. In order not to inconvenience the Secretary, who has been kind enough to show up here not only on time, but early, and give us his time, I think we should get started. Mr. Secretary, the floor is yours.

**SUMMARY STATEMENT**

Secretary DALEY. Thanks very much, Mr. Chairman. Let me introduce the two people who are with me. Ray Kammer, who is our Acting CFO and Assistant Secretary for Administration, and Mark Brown, Commerce Department Budget Officer, are joining me today.

Let me go through my remarks, Mr. Chairman. I appreciate the opportunity to appear on behalf of the President's fiscal year 1998 \$4.22 billion budget request for the Department of Commerce. Our budget represents and supports our programs that are at the foun-

dation of our economic growth, job creation, and our global competitiveness. It reflects the President's vision for our Nation as we approach the 21st century and builds on the fine work of my predecessors, Mickey Kantor and Secretary Brown.

The fiscal year 1998 budget request for the Department of Commerce is an increase of \$466 million over the fiscal year 1997 level. Our budget growth is in three main areas: the decennial census, ongoing weather modernization efforts, and technology investments.

Outside those three critical areas, the Department's budget stays flat from fiscal year 1997, and even with this increase, our budget remains the smallest of any Cabinet agency. And perhaps most important, it is fully in line with the President's commitment to a balanced budget in the year 2002.

Our 1998 allocation recognizes the role which Commerce plays in helping to spur our economic growth. To fulfill the priorities of this Department, we will, No. 1, aggressively promote export promotion and trade law enforcement. On the global economic stage, our Department works to open markets, promote exports, and enforce our existing trade agreements. We will advocate on behalf of American firms while heading off unfair trade practices.

With our new trade mission criteria in place, we will once again help the private sector capture growing business opportunities abroad in the face of fierce foreign competition. Also, I would like the chairman and members of the committee to know that I am committed to being an active chairman of the Trade Promotion Coordinating Committee [TPCC] and will work to ensure that the TPCC plays a central role in improving trade finance and export promotion activities, beginning with the TPCC steering group meeting, which I will hold before the end of the month.

No. 2, technology for economic growth. Technology and innovation, the elements of our winning economy and the keys to the global economy of tomorrow, are still our top priorities. This administration has long considered the private sector a partner in keeping us on the cutting edge, and gone are the days of a decade ago when our competitors put technology which we developed to better use than we did.

No. 3, expanding opportunity for all Americans and all communities. Being strong and ambitious abroad means little if we cast a blind eye toward the workers, businesses, and communities here at home. Commerce will continue to work with the economically distressed communities and promote minority entrepreneurship to establish businesses and jobs that are the cornerstones of our neighborhoods and communities.

Performing the best census in our Nation's history, Commerce will be generating economic data analyses that are thorough market studies of an ever shifting global economy. The 2000 census is the most important of those statistical analyses, and not just because it will add to our competitive advantages and decide everything from congressional representation to budget apportionment. The census goes, in my opinion, to the very heart of what Government does. It is in many ways the most direct contact which people will have with their Government. We can serve America well, reestablishing the reasons for the faith in our Government, and prove

wrong those who are cynical about bipartisanship by working together to conduct a decennial census that is accurate, fair, cost effective, well-managed, and free of partisan politics.

I look forward to working with you, Mr. Chairman, and this committee and the entire Congress to fulfill that mandate.

Our resource management and environmental stewardship. Commerce has a critical role in resource management and environmental monitoring and prediction responsibilities. This budget request will allow America to manage our resources to compete for the future. Most people think that natural resources at Commerce means only fisheries, but in addition to this multibillion dollar industry that employs thousands, our resource and weather work helps industries like shipping, airlines, and agriculture, all of which are multibillion dollar exporters and employers in their own right, to operate safely and efficiently.

Like the rest of the Federal Government, the Commerce Department is doing more with less. Over the past 6 months, the Commerce staff has been reduced by 3 percent, continuing a 4-year trend in personnel decreases. The number of political appointees will be reduced by nearly one-third by the end of this year, and management layers have been eliminated and more staffers are working in field offices.

To help our streamlining efforts, Commerce has several innovative management initiatives underway. While not principally a regulatory agency, we remain focused on ensuring that all regulations in the Department maximize benefits while placing the smallest burden on those whom we regulate. The Bureau of Export Administration has taken a new look at its regulations, as has the National Oceanic and Atmospheric Administration, which is revising and updating its marine resource regulations, eliminating over 400 pages of them, and EDA has eliminated over 200 of the 370 regulations.

I am determined to continue this reform effort to make sure the same efficiency and productivity that America's private sector has embraced finds a home at Commerce.

I hope with your help, Mr. Chairman, to establish the Patent and Trademark Office as a performance-based organization. This would allow Commerce to run the PTO more like a private-sector business operation, with flexible procurement, simpler personnel rules, and accountability through a CEO. Doing this requires a legislative approval, but in the hope of helping this process along, we have submitted a new reprogramming proposal to the committee and your House counterparts that would separate PTO policy functions from operations.

I would also like to take a look at the Advanced Technology Program to see how it can be strengthened. I believe ATP is a critically important program that provides enormous benefits to our Nation's long-term economic prosperity. ATP projects play a special role in fostering technological developments with long-term payoffs and widespread benefits to the economy. The President's budget provides strong support to this program.

Since becoming Secretary, I have heard a number of questions which have been raised by you and by others about the budget process, about the ratio of new projects to old, about big companies putting grants outside a consortium, about whether applicants first

go to the private capital markets for funding, and also whether States which lack strong R&D bases should have a better chance of participating in this program. I would like to take a look at these questions in regard to the fiscal year 1998 budget and ask my staff to consult with public and private experts and ATP participants to prepare an analysis for me. I would be glad to have the advice of the committee on these issues and would like to get back to you within 60 days with our conclusions.

Because I also have concerns that there is duplication among the various divisions of ITA, I have asked for a reorganization of the ITA to accomplish the following: reduce administrative costs, eliminate redundant functions, strengthen our priority programs, such as the Trade Compliance Center, and move forward with more export assistance and trade advocacy resources out of our headquarters and into the domestic and field offices, and overseas offices. I would also like to put the criteria that drive the Malcolm Baldrige National Quality Award, which rewards the best in private-sector management practices, to work at our Department, beginning with two of our most publicly accessible and visible agencies—PTO and the National Weather Service.

#### PREPARED STATEMENT

Also, Mr. Chairman, finally, with an eye on the fiscal year 1999 budget, I have ordered a comprehensive management review for the entire Department. A team from my office will examine all of our programs to guarantee that Commerce is giving America a real return on the dollars which the taxpayers invest with us, our work and our workers. In the end, the same productivity and practicality that has helped our Nation take the lead in the global economy should be applied to the Commerce Department.

Thank you, Mr. Chairman. I look forward to answering your questions.

[The statement follows:]

#### PREPARED STATEMENT OF WILLIAM M. DALEY

Mr. Chairman and members of the Committee, I am happy to appear before you today, to discuss the President's vision for the Nation's future and to talk about how the Department of Commerce is a critical part of that future. I'll also describe how our budget for fiscal year 1998 will help make the President's vision become a reality.

I'll outline our budget request in a moment, Mr. Chairman, but first I want to talk about the vital importance of the economic growth and job-creation priorities which Commerce supports, and which are so central to this Administration's vision for America's future.

In his State of the Union message, the President stated: "Over the last four years, we have brought new economic growth by investing in our people, expanding our exports, cutting our deficits, creating over 11 million new jobs, a four-year record." The Administration and the Congress should be proud of these accomplishments, but you and I both know that we should not pause in our efforts to ensure that our Nation retains its pre-eminent position in the global marketplace. The President continued: "We face no imminent threat, but we do have an enemy. The enemy of our time is inaction."

I agree with that statement, Mr. Chairman, and at the Commerce Department we are doing our best to help the private sector expand the Nation's economy even further. The overriding goal of the Department of Commerce is an action-oriented one, and it is stated clearly in our Mission Statement: "To promote job creation, economic growth, sustainable development, and improved living standards for all Americans".

We do this by working in partnership with business, universities, communities, and workers.

Last year, Commerce programs provided significant benefits for the Nation's economy and contributed to our world leadership roles in trade, technology, and science. The economy has been strong for the last 4 years: the private sector grew at an annual rate of 3.3 percent, exports are at a record high, and nearly 11.8 million jobs have been created. Much of this growth came in small- and medium-sized businesses, which continue to be the focal point for Commerce's trade development, export assistance, and technological development programs.

Commerce's emphasis this year has been on streamlining and focusing our programs to provide maximum support to American communities, businesses, and families in more effective ways—"one-stop-shops"—and using new approaches—World-Wide-Web sites, and CD-ROM technologies. We're stressing that kind of customer focus all across Commerce, and I'll be providing examples today of how we've been able to re-shape our programs in order to serve the Nation as a whole, and our specific customers, more directly.

The fiscal year 1998 budget request for the Department of Commerce is \$4.22 billion, an increase of \$466 million over the fiscal year 1997 level of \$3.76 billion. Even with this increase (much of which is required for Decennial Census preparations), Commerce's budget remains the smallest of any Cabinet agency. Full-Time Equivalent (FTE) employment in fiscal year 1998 will increase to 38,298 over the fiscal year 1997 level of 34,937, also largely for Decennial Census needs.

This budget request is fully in line with the President's commitment to a balanced budget in 2002. The fact that the President has proposed this increase, even within the very tight constraints necessary to meet the President's commitment, is testament to Commerce's effectiveness as a catalyst for the Nation—spurring economic growth and development, technology and infrastructure investment, and environmental and resource stewardship. And I fully agree with the President's position on the balanced budget amendment—I, too feel that the Nation would suffer if the Federal government's critical flexibility to respond to pressing needs and to provide essential programs and services were held hostage. By working together, we can attain the goal of balancing the Federal budget by 2000 without a Constitutional amendment.

The Commerce Mission which I mentioned a moment ago is supported by three interdependent themes which encompass our programs: Support for the Nation's Economic Infrastructure, Support for the Nation's Science, Technology, and Information Initiatives, and Support for the Nation's Resource Management and Stewardship Responsibilities. In pursuing our mission, Commerce will be following several priorities, which I'll be focusing on in the months ahead:

- Aggressive Export Promotion.*—Commerce has programs which promote exports, identify new market opportunities, advocate for U.S. firms, and emphasize small and minority-owned firms and enforcement of existing trade agreements.
- Technology for Economic Growth.*—Innovation is a key source of our economic growth, and Commerce supports the private sector in accelerating the application of critical technical innovation.
- Expanding Opportunity for All Americans and All Communities.*—Through EDA and MBDA, Commerce strengthens the ability of communities to have strong local economies and participate in the global marketplace.
- Performing the Best Census in Our Nation's History.*—Commerce produces demographic and economic information which is the basis for Congressional apportionment and the allocation of Federal funds. Commerce data provide insights into the American marketplace and the changing nature of our economy and people. And I support our plan for Census 2000 as the only way to hold down costs and improve the accuracy of the Decennial Census.
- Resource Management and Environmental Stewardship.*—Commerce has critical resource management and environmental monitoring and prediction responsibilities, affecting billions of dollars of economic activity each year.
- Accountability and Results-Oriented Management.*—We must ensure that the public investments in Commerce Department programs are helping to build long-term economic growth. Commerce has made valuable contributions to our current economic prosperity.
- Building Partnerships with America's Businesses and Communities.*—Commerce works with businesses and communities not just through our programs, but also through a constant dialogue of listening and exchanging ideas.

Let me now discuss our key bureau programs and their requests for the coming year. I also want to share with you some real-life examples of how our programs are accomplishing their goals and are helping American businesses and communities.

The International Trade Administration (ITA) remains at the forefront of the Administration's efforts to boost the economy and support more high-wage, high-skilled jobs, by increasing the sales of American goods and services in the world marketplace. ITA's request of \$272 million will continue support for the Administration's Big Emerging Market initiative, support for small- and medium-sized businesses through the Export Assistance Centers and for larger firms through the Advocacy Center, and fund our responsibilities as a participant nation in the Uruguay Round and NAFTA.

Advocacy for American exports is one of the prime responsibilities of the Commerce Department, and these efforts are paying off dramatically on behalf of the Nation's businesses and workers. Some \$65 billion (including \$38 billion in American content exports) were generated from our advocacy efforts in 1995 and 1996.

As Secretary of Commerce, I chair the Trade Promotion Coordinating Committee, which focuses the Federal government's response to foreign competition. My first meeting as Chair will take place in the next few days. During my tenure, I will work to ensure that the TPCC remains an effective vehicle for coordinating these crucial programs supporting our economy.

So much of our Nation's \$835 billion in exports come from small and medium-sized companies. Rocket Man, Inc., of LaGrange, Kentucky is a 16-person company that produces mobile beverage systems used at amusement parks, festivals, and sporting events. In 1993, Rocket Man realized there was an export potential for their products, and contacted ITA. When they began exporting, sales grew 300 percent between 1993 and 1994, and 225 percent the following year. ITA helped find overseas distributors, refine an export strategy, set prices, find language interpreters, and refine their information needs. The company president said of ITA's support: "It's invaluable, instead of having to make mistakes on my own. When you have someone you can call, it can bring [essential information] up [to] companies like ours with little or no experience, where otherwise it would take years" for small and medium-sized companies to develop on their own.

ITA has also helped Petrotech of Belle Chase, Louisiana, which designs and manufactures microprocessor controls for turbomachinery. Petrotech's president told us how ITA's New Orleans office helps his 120-person company, especially in the face of foreign competition: "We battle in practically every sale against the customer, the customer's government, the competitors, and the competitor's government \* \* \*. ITA helps us get the answers to questions on the legality of sales, sending proposals, and making quotes \* \* \* [Commerce's] data base about area exporters is astonishing, and provides a networking catalyst not available elsewhere."

I am considering ways to reorganize ITA, to reduce administrative overhead, address concerns about political appointees, and put more personnel in the field.

The Bureau of Export Administration (BXA) helps implement the Nation's foreign policy and national security goals by enforcing export controls over dual-use goods and technologies. BXA's request of \$43 million includes \$2 million to fund their new responsibilities under the Chemical Weapons Convention (CWC) treaty and \$1 million for implementation of the Presidential initiative on encryption.

The Administration strongly supports ratification of the CWC, in the best tradition of bipartisan foreign policy, and wants to ensure that our Nation retains its world leadership role in controlling these weapons. We believe the U.S. should be one of the original members of the treaty when it enters into force. The CWC will help further the cause of global peace, and if ratified, it will go into effect on April 29, followed by a 30-day implementation period.

In my view, failure to ratify the treaty is not a realistic option. It was proposed and negotiated under the Reagan and Bush administrations, and all of our G7 partners have ratified it. The CWC treaty enjoys widespread international support, as well as the backing of the U.S. chemical industry—the Chemical Manufacturers' Association and other major trade groups. From an economic perspective, our Nation's chemical industry would be subject to trade sanctions that apply to non-member pariah states. Commerce will play a lead role in minimizing burdens on industry and maximizing protection of company-confidential information. Based on our excellent working relationship with the chemical industry, I am confident that they trust us to represent their, and the Nation's, best interests.

BXA has been of great help to the 80-year old Entwistle Company (of Ft. Worth, Texas, and Hudson, Massachusetts), designers and manufacturers of ordinance parts. Larry Hove, Entwistle's Vice-President, said: "Through a chain of events, we sold a few million dollars worth of products that we wouldn't have sold if we hadn't participated [at a defense show in Paris] \* \* \*. The value [of BXA] for me is that I have someone who I can talk to who has a global view of what's happening in the defense world. We don't have people on the ground in any place."

The Economic Development Administration (EDA) assists communities across the country in recovering from economic difficulties, most often by establishing the infrastructure that will enable them to generate and retain jobs, and thus create self-sustaining economies. EDA also maintains the flexibility to respond to high-priority or unexpected needs, ranging from natural disasters to the closing of military bases. EDA has undertaken significant management reforms and has undergone a comprehensive reorganization to ensure efficient and effective program implementation. EDA's \$343 million request includes funding for the Public Works grant program, which will yield thousands of new jobs in distressed communities. In this session of Congress, the Administration will submit a legislative proposal to re-authorize EDA's programs.

EDA helped develop the West Virginia Wood Technology Center in Elkins, completed in 1993, which provides training in log and lumber grading and inspection, profile knife grinding, kiln drying, and related technologies to workers in a 5-state region. The Center's success has helped the host county's unemployment rate drop two-thirds. Seven companies are expanding into new product markets, and at least one (and up to seven) out-of-state companies are relocating into the county to take advantage of the skilled labor force.

EDA is one of the Commerce bureaus that is moving ahead on finding ways to measure the impacts of its programs in new ways. EDA has developed and implemented a performance measurement system for its programs which, over time, will generate outcome information on the economic impact of their projects in distressed communities. The measures, which include job creation and private sector leveraging, will evidence the return on the Department's investments in the economic growth of the nation.

The National Telecommunication and Information Administration's (NTIA) request of \$54 million will support a \$14 million increase to the high-priority and highly-competitive Telecommunications Information and Infrastructure Assistance Program, which supports computer access and literacy to serve educational, medical and other social needs in every state. NTIA's funding request also provides for the United States' participation in the International Telecommunication Union Plenipotentiary Conference, and for a new initiative supporting telecommunications privacy.

The National Technological University in Ft. Collins, Colorado, is a private, non-profit, accredited institution providing graduate degrees in 14 engineering disciplines, using faculty of 47 U.S. universities. NTU was formed in 1984, and is the first university in the world to operate a regular education service on a telecommunications satellite. Its use of telecommunications and video technology allows engineers to earn degrees and keep abreast of new developments in their fields without stopping work to go back to school. Dr. Lionel Baldwin, President of NTU, said: "Commerce has been the only part of the Federal government that has participated in any significant way \* \* \*. NTIA provided critical start-up funds for equipment to launch NTU and continued this support during the initial, very rapid growth period."

The Minority Business Development Agency (MBDA) seeks \$28 million to continue addressing the critical needs of the Nation's minority business communities. In 1998 MBDA will continue its reinvention strategy which calls for the coordination and mobilization of public and private resources and building business capacity within local communities across the country. MBDA's 1998 request includes funds to support both new and existing programs—a revamped management and technical assistance effort including service delivery through Internet, and projects developed jointly with the Small Business Administration. Last year, a major revision was made to the Minority Business Development Center (MBDC) program. MBDA now grants "bonus points" to local applicants in the competitive award process and requires a 40 percent cost share.

Spatial Data Integrations, Inc., of Louisville, Kentucky is a minority-owned company which provides mapping and digital data conversion services to government, utilities, and private sector businesses. As a contractor and subcontractor for the Department of Defense, for example, they produce topographical and hydrological maps, and specialize in describing the relationships between items on those maps. They have been bidding on projects for the local transit authority and utility companies, as a way to expand business. Audwin Helton, company President, has said that the local Business Development Center helped him develop business and financial plan that he "could take to the bank". With this help, the company has expanded from 4 to 13 employees. He said: "They've helped me with proposal writing and basic business advice which I still seek out regularly. They treat everyone with respect."

Field Lining Systems of Glendale, Arizona, is a minority-owned company that supplies and installs linings for tanks, ponds, and landfills. They buy information about business leads from MBDA's Phoenix Business Development Center at a rate that this small company can afford, and then use this information for bidding on jobs in nine western states, including Alaska. They came out of Chapter 11 in 1991, have been growing ever since, and hope to expand into the Mexican market.

Also in his State of the Union address, the President said: "To prepare America for the 21st century, we must harness the powerful forces of science and technology to benefit all Americans." The United States remains the world leader in many aspects of science, technology, and information, and the Department of Commerce is instrumental in helping the Nation maintain that leadership role. The \$9.2 million funding request for the Under Secretary for Technology/Office of Technology Policy (US/OTP) will support the Experimental Program to Stimulate Competitive Technology (EPSCoT) initiative, and a new series of economic and technology development programs in support of the Administration's foreign policy efforts. EPSCoT seeks to foster regional technology-based economic growth by creating stronger linkages among companies, universities, and governments in States traditionally under-represented in Federal R&D funding.

The National Institute of Standards and Technology (NIST) requests \$692.5 million for fiscal year 1998. This will allow for several new competitions in the Advanced Technology Program (ATP), which stimulates promising, but high-risk, enabling technologies that can form the basis for new and improved products, manufacturing processes, and services. This funding will also maintain our nation-wide network of Manufacturing Extension Partnership (MEP) service providers, which enhance the global competitiveness of thousands of smaller-sized manufacturers. The Malcolm Baldrige National Quality Award program has been a national success, and will be expanded to cover education and health care, two large and critical areas of the national economy which are not currently served by the award.

The NIST laboratories are a key part of the Department's technology programs. These labs develop and supply companies, universities, hospitals, and other organizations with essential measurement know-how. They develop otherwise unattainable tools that ensure confidence in the growing number of measurements demanded by the technically complex affairs of commerce, science, engineering, health, safety, defense, law enforcement, and the environment. "NIST quality" measurements are part of a universal technical language linking U.S. companies and institutions to the rest of global economy. As part of its extensive ongoing program evaluation process, NIST conducts impact studies of the measurement-related infrastructure it provides to the U.S. economy. These studies are one mechanism the Department will use to demonstrate its performance under the requirements of the Government Performance and Results Act, a vital law that I'll discuss in more detail later on.

In one of these studies, U.S. makers of coordinate measuring machines (including: Brown & Sharpe Mfg. Co. of North Kingston, Rhode Island; Giddings & Lewis Inc. of Fond du Lac, Wisconsin; and The L.S. Starrett Co. of Athol, Massachusetts) credit NIST with saving them 5–10 years in early-stage research. Firms also attributed annual production-efficiency gains—ranging from 10–30 percent between 1985 and 1988—to NIST's pioneering work on computer-based, error-compensation methods. The technology enabled them to produce lower cost designs without sacrificing performance. In all, the effort is estimated to have produced first-level benefits totaling more than \$93 million. Generated by an initial NIST investment of \$430,000 over 10 years, this total does not include scrap reduction and other secondary benefits realized by manufacturers because of the increased accuracy of their inspection equipment.

The legislative mandate of the ATP is to promote "commercializing new scientific studies rapidly" and "refining manufacturing practices." This offers a tremendous scope of opportunity to spur America's creative technology energies. The objective of some projects is to develop technologies that enable lower cost, higher quality, or faster-to-market products. The ultimate objective of others is to develop the know-how to provide new-to-the-world or radically improved products and services. The ATP has a high potential impact on U.S. economic growth because, unlike other Federal technology programs, it makes investments explicitly for this reason rather than for some other National goal.

One example of this is Nanophase Technologies Corporation of Burr Ridge, Illinois, a 2-person start-up company that received an ATP award to develop an innovative process for producing ultra-fine ceramic and metal powders at the nanometer scale for applications ranging from skin care products to high performance engine parts. Their ATP research enabled the company to attract support from major industrial organizations and venture capital firms, who furthered commercial develop-

ment. The company has launched new products, and negotiated an agreement with E. Merck for international distribution of one early project this year. The early applications are projected to yield more than \$20 million in annual revenues within three years, and more products are in development. The company has opened the world's first facility devoted to commercial-scale production of nanocrystalline materials, and expects to employ several hundred workers within the next two years. "All of this represents huge progress and success for NTC," says Robert Cross, CEO and President of the company, "and it is directly the result of the challenge and support of the Advanced Technology Program."

I also want to take a look at the ATP program to see how it can be strengthened. I believe ATP is a critically important program that provides enormous benefits to our Nation's long-term economic prosperity. ATP projects play a special role in fostering technological developments that have long-term payoffs and widespread benefits to the economy—the kind of initiatives that would otherwise not be funded by the private sector. The President's budget provides strong support for this program.

Since becoming Secretary, I have heard a number of questions raised—by you as well as by others—about the program and its funding. I am committed to examining questions that have been raised—about the budget process, about the ratio of new projects to old ones, about big companies winning grants outside of consortia, about whether applicants first go to private capital markets for funding, and about whether States lacking strong R&D bases should have a better chance of participating in this program. I want to look at all of these questions, and I've asked my staff to consult with public and private experts and ATP participants and prepare an analysis and recommendations for me. I would be very glad to have the advice of this Committee on these issues (and will be back to you within 60 days with my conclusions).

Before I complete my discussion of NIST this morning, I want to say that I am very impressed by the quality movement in the private sector. Through the Malcolm Baldrige Quality Award, I have already had the chance to meet some of the best and brightest in the private sector. It is clear that Quality Management works, and I want to apply those same principles to the Department of Commerce as much as possible. The advice that one of the leaders of the quality movement in the private sector gave me was to start by creating some "islands of quality" and then build on them. I've selected two organizations in the Department to be our first "islands of quality"—the Patent and Trademark Office and the National Weather Service. Both of these agencies deal with the American public on a daily basis, so their quality improvements should immediately benefit our citizens.

The Patent and Trademark Office (PTO) promotes industrial and technological progress in the U.S. by administering the laws relating to patents and trademarks, strengthening the protection of intellectual property rights, and advising on the trade-related aspects of intellectual property. In fiscal year 1998 the PTO requests a budget of \$656 million, all of which is derived from user fees. The PTO's appropriation request, however, provides that \$92 million in patent fees will be retained in the Treasury for deficit reduction.

Fogarty Research and Development of Portola Valley, California, designs and develops medical devices, and has acquired 60 patents on its products. Company founder and president Thomas Fogarty, M.D., depends on PTO to bring critical time and cost savings, and valuable technical opinions, to his products and production methods. He says: "By our interaction with PTO, we can learn ways that we can change the design or the claim and make it protectable \* \* \*. I could potentially have 2–3 engineers working on a project accumulating bills at the rate of \$30,000."

The Economics and Statistics Administration (ESA) seeks \$52 million, a modest increase that will pay large dividends in improving the statistics that are essential to tracking and understanding the Nation's growing and changing economy. ESA's priority is to implement the next steps in the Bureau of Economic Analysis's (BEA) strategic plan for improving the quality of GDP and other economic data and for re-engineering its antiquated computer systems. Although BEA has made good progress in implementing its plans in recent years, it has done so by eliminating important (but lower priority) statistical programs. Much work remains and further cuts would compromise the quality of our most basic measures of economic performance.

In decrying the "lack of investment in our statistical infrastructure" in recent years, the National Association of Business Economists said in a recent press release that the statistics produced by BEA and Census "are vital to the functioning of our market economy. Businesses make decisions about where to locate a plant, how much to produce and how much to pay their workers based on [the] data \* \* \*. Participants in financial markets make investment decisions which in turn affect interest rates, the stock market and the value of the dollar. These data also serve as

critical inputs into the formulation of monetary, fiscal and trade policy. In short, the quality of our economic statistics impacts the lives of every American."

The Census Bureau measures the demographic and economic character of the Nation. The Census Bureau's fiscal year 1998 request totals \$661 million. In 1998, we will accelerate the implementation of our plan for a 2000 Census that is cost effective and accurate—a "one-number" census that is right the first time. In addition to partnerships with State and local governments, easy-to-read and return forms and the use of cutting-edge technology, I support the use of statistical sampling in 2000 in order to hold down costs and increase the quality of the Decennial Census. Sampling has been endorsed by some tough audiences—the National Academy of Sciences, GAO, and our own Inspector General.

The Bureau has other cyclical census activities, and additional portions of the request will be devoted to conducting the Economic Censuses, which are performed every five years. The vital economic data they produce are the foundation for all of our economic statistics for the next five years. As with BEA, the Census Bureau has had to eliminate important (but lower priority) activities to live within funding constraints. Further cuts in the Economic Censuses would seriously compromise the quality of this endeavor.

Census data give insight into our Nation's local markets. For example, the Latin American Economic Development Association (LAEDA) of Camden, New Jersey, uses Census data to help train local entrepreneurs in commercial real estate and small business creation, and it focuses on the development of effective business plans and the key role that Census data play in them. LAEDA has increased its 9-week training programs from 2 to 3 per year, because of increased demand. Alfonso Castillo, Director of Training and Technical Assistance, said: "People walk away [after completing our training program] with a good idea of what data are available, how it can be used, and how it will help their business. It has worked very well".

B&B Organic Compost & Soils, Inc. of Durham, North Carolina, with a patented method of converting stumps and wood waste to organic topsoil, also benefits directly from Census data. The firm is expanding by granting franchises on its process around the country, and charges royalties on the basis of local population data. Company founder and president Bill Andrews says that Census staff are "super nice", and the data he gets from them are available in a hurry and just what he needs.

NOAA remains the largest component of the Commerce Department, with a request of \$2 billion for fiscal year 1998. This net figure contains a number of offsetting priority increases, as well as decreases in programs that are attaining their goals and therefore can be eliminated or continued at reduced levels. Nation-wide modernization and restructuring of the National Weather Service continues, with the initial deployment of the Advanced Weather Interactive Processing System (AWIPS) and operational streamlining of activities under the NWS Modernization and Associated Restructuring initiative. These initiatives will produce more timely warnings of severe weather and accurate weather forecasts. Restoration of American fisheries and the protection of species in danger of extinction will continue to be a priority. One major change included in the NOAA budget for fiscal year 1998 is the way in which capital assets, such as environmental observing systems and facilities, are budgeted.

I'm pleased to be able to share with you some illustrations of how NOAA programs are helping to save lives and property, and to preserve our natural environmental. During the major blizzard last year, for example, we provided early and accurate forecasts, so State officials were able to implement emergency plans promptly, and commercial airlines were able to relocate their planes out of harm's way. We issued warnings about Hurricane Fran 31 hours before landfall, and flash flood warnings 6 hours before they occurred. And although last year saw a higher-than-normal number of tornadoes, we are able to provide warning lead times of more than 15 minutes, so the number of lives lost was well below the average.

By implementing controlled access measures for some fisheries, we've reduced accidents and property loss, increased the economic value of fish by making fresh products available for longer periods. We've provided scientific support to the Coast Guard in 70 oil or chemical spills, and partnered with State and local agencies to restore 40,000 acres of coastal habitat.

The Hatteras Village Aqua Farm in Hatteras, North Carolina is a clam-breeding company established in 1984. Initially the company sold their clams to wholesalers, but gradually broadened into direct sales to restaurants (1992), their own retail store (1995), and last year, they opened their clam beds to tourists, so that customers could gather their own clams. A NOAA grant to North Carolina State Uni-

versity has helped the University study this type of approach to clam breeding and has helped the company with marketing their unique concept.

Biotechtronix, Inc., of Pendleton, South Carolina, develops chemical testing instruments for the commercial marketplace—applications in food, environmental, and chemical companies. This technology is a result of biodegradable material research funded by NOAA, which revealed the relationships between chemical elements and color sensors. Using those research findings, the company developed and was able to market a more sophisticated device.

Lincoln Electric System of Lincoln, Nebraska, generates or buys power to serve that city of 200,000 people. Summertime consumption of power can often outstrip the System's own capacity, so System staff arrange to purchase the additional power needed, at the lowest possible cost. Chief Engineer Phil Euler says: "We have several models, all using statistics of weather provided by NOAA, to help us determine our customers' electric needs and the most economical ways of meeting them. Our customer accounting group uses weather data in explaining to customers why bills are higher this month than last \* \* \*. Our technical assistance group uses weather data to advise on the design of buildings and how big an air conditioner and heating unit are needed. We use weather data in setting budget billing by normalizing power [customer] consumption and removing the weather extremes."

Commerce focuses on providing effective management and stewardship of our Nation's resources and assets to ensure sustainable economic opportunities. This requires us to see resources in new ways, and to update our responsibilities in relation to them. In the past, Commerce's definition of "resources" and our management responsibilities focused on tangible items, and our role was seen as a hands-on one. NOAA, for example, has direct management responsibilities for fish stocks, and must preserve and protect endangered species. But now we recognize that the Federal portion of the radio frequency spectrum (which NTIA oversees), and intangible items such as intellectual property rights (which PTO protects) and the capabilities of former military bases (which EDA helps local communities to harness) are also key resources. Our role with these resources is a stewardship (rather than a hands-on management) one.

Commerce has several innovative management initiatives underway. While not principally a regulatory agency, we must remain focused on ensuring that all regulations of the Department are designed and implemented to maximize societal benefits while placing the smallest possible burden on those we regulate. BXA has taken a new look at its regulations, and has rewritten many of them, simplified and clarified others, and dropped the remainder. NOAA is revising and updating its marine resource regulations, eliminating 400 pages of them. EDA has eliminated over 200 of its 370 regulations.

I am committed to reducing the number of political appointed positions at the Department by the end of fiscal year 1997. We will develop a specific plan to achieve this goal in a manner that ensures the efficient and effective operation of the Department.

We are implementing the Government Performance and Results Act (GPRA) seriously in Commerce, and when the law is fully implemented at the start of the next fiscal year, we will have a Strategic Plan and useful performance measures in place. The initial plan we've already provided to OMB has been declared to be one of the best that was developed across the Federal government. NOAA's own Strategic Plan, for example, serves as a vital management tool within that bureau and as a positive example to other agencies. We look forward to consulting with this Committee and others which are interested in our programs later this Spring, and ensuring that the GPRA Strategic Plan we send up in September gives you additional useful insight into the effectiveness of our programs on behalf of American families, businesses, and communities.

We have launched a pilot program under the Vice President's Performance Based Organization (PBO) effort which is designed to make the Federal government more flexible and autonomous, and make managers accountable for measurable results. As in a private business, a PBO is designed to achieve clear accountability for operating results. A key PBO characteristic is that the organization is granted considerable administrative and regulatory flexibilities in return for increased measurable performance. One Commerce pilot is being developed under this initiative—the Patent and Trademark Office—and others are under consideration, including the National Oceanic and Atmospheric Administration's seafood inspection program.

The Vice President has encouraged us to establish PTO as a PBO. Ultimately, through legislation, we hope to run the operational elements of PTO in a manner similar to the way a private business operates. PTO would have a much more flexible procurement system, a simpler and more flexible set of rules for managing personnel and accountability through a CEO with a performance agreement that con-

tains specific, measurable objectives. The authorizing committees were engaged and supportive of the idea of a PTO PBO in the last session of Congress.

In the meantime, we can make progress toward this goal of a PTO PBO through administrative actions. We have just submitted a reprogramming proposal to this Committee and to the House Appropriations Committee including an administrative reorganization which would: separate policy functions from operations; establish three business lines in PTO—patents, trademarks, and information dissemination; reorganize the patent examining group into industry sectors; and consolidate some administrative functions.

This administrative reorganization would be a significant advance toward accomplishing a more business-like operation, but we would still need the legislation to: grant additional personnel flexibilities; exempt PTO from FTE ceilings; create an Undersecretary for Intellectual Property to oversee the policy functions of patents and trademarks; and establish a Chief Operating Officer.

I am very enthusiastic about putting PTO operations on a more business-like footing. I hope that this Committee is able to give our reprogramming proposal favorable treatment.

The Commerce Administrative Management System (CAMS) will replace existing financial and administrative systems, and will provide the Department with an integrated, user-friendly, flexible financial and administrative system to support program managers, improve productivity, and reduce costs. The Department took delivery of the central part of the system—a new off-the-shelf Core Financial System (CFS)—in August 1996, and we marked a key milestone in CAMS implementation when the Census Bureau began operating several parts of the CFS in October. Census plans full bureau-wide implementation of the CFS by October 1998. NOAA began using a critical component of the CFS in August 1996, and they plan to begin implementing other parts of the CFS in their Washington-based offices this Summer, with full NOAA-wide implementation of the CFS by fiscal year 1999. Other bureaus are planning CFS implementations in fiscal year 1998 and beyond.

Converting software and information in preparation for the year 2000 poses a real and serious threat to business processes throughout the world. If left unchanged, systems will stop functioning or produce erroneous results when they begin to process 20th century dates. The scope of this problem is great, ranging from everyday purchases of consumable office supplies, to our ability to report economic and statistical data used in critical ways throughout the Federal government and private industry, to the control of long-term weather forecasting systems.

The shifting nature of today's economic world is challenging, and these challenges translate into opportunities for our programs and our management systems. Commerce can meet these challenges, and will continue forging ahead to promote economic growth for all Americans.

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#### BIOGRAPHICAL SKETCH OF WILLIAM M. DALEY

William M. Daley, the 32nd Secretary of Commerce, was nominated by President William J. Clinton on December 13, 1996, and confirmed by the Senate on January 30, 1997.

Described by President Clinton as a man of "rare effectiveness," Secretary Daley served as Special Counsel to the President for the North American Free Trade Agreement, coordinating the successful campaign to guide passage of the historic trade accord through Congress.

In accepting the nomination, Mr. Daley said he was committed to working "in partnership with American businesses, from Fortune 500 companies to small enterprises, in our inner cities and rural America, to help our nation face the challenges and seize the opportunities that lie ahead."

Mr. Daley said, "the Commerce Department is where America's potential and promise come together, where our future jobs are created and our economic growth is nurtured through trade, technology and information."

Secretary Daley has set a broad and aggressive agenda that ranges from doubling the number of small business exporters to modernizing the weather service to making the 2000 census the best in our nation's history to maintaining U.S. leadership in advanced technologies.

Secretary Daley, a long-time Chicago civil and business leader, was a partner in the law firm of Mayer, Brown & Platt. He was president and chief operating officer of Amalgamated Bank of Chicago from 1990 to 1993, after joining the bank as vice chairman in 1989. He also practiced law with the firm of Daley and George of Chicago.

Secretary Daley has served on corporate boards and been active in many Chicago community and civic projects. His professional honors include the St. Ignatius Award for Excellence in the Practice of Law in 1994 and the 1994 World Trade Award presented by the World Trade Center Chicago.

Secretary Daley was admitted to the Illinois bar in 1975. He holds an LL.B from John Marshall Law School, Chicago; a B.A. from Loyola University; and an honorary degree of Doctor of Laws from John Marshall Law School.

Secretary Daley and his wife Loretta have two daughters and a son.

#### COMMITTEE ALLOCATION

Senator GREGG. Thank you, Mr. Secretary.

First, let me make a general statement because this issue is on the front burner right now, and that is, the pressures which we have in this committee, which are rather inordinate relative to funding Commerce, Justice, State, and many of the independent agencies which are before this committee, are going to become much more severe. It appears for a variety of reasons the administration has decided not to pursue substantive entitlement reform. The decision of the administration not to do that falls not only on the entitlement accounts, which are very important accounts and, in my opinion, need to be fundamentally reformed for our children's future, but more importantly, falls on the discretionary accounts.

We are going to receive an allocation in this committee which is dramatically less than what the demands of various agencies will be, and that allocation is going to be a function of the fact that this administration has not been coming to the table, the White House specifically, on the issue of entitlement reform. That is going to flow to you folks.

I just want to state that as an opening remark, and it is unfortunate because programmatic activity that might otherwise be funded will not be.

#### TRADE MISSIONS

On a secondary issue, I wondered if you could just tell the committee where you stand with the trade missions. I understand you have taken an initiative to put to bed some of the concerns relative to the political nature of the membership of the missions. I commend you for that, and I would be interested if you could outline that for us.

Secretary DALEY. Mr. Chairman, when I first was nominated by the President back in December and began a round of discussions with Senators, Members of the House, and with the business community, I heard two things regarding the trade missions: one, the importance of them as a part of our trade promotion and two, the critical importance to be aggressive on behalf of American businesses, where there are opportunities for American businesses that the Government should be involved in advocating on behalf of them, specifically major contracts around the world that foreign governments, our counterparts, have either a specific ability to award that contract or are major players within it.

At the same time, questions have been raised about these trade missions. I asked for a 30-day stay on all trade missions effective the day I was sworn in to do a comprehensive a review. I had Under Secretary Stuart Eizenstat, Clyde Robinson, Deputy Chief of Staff Andy Pincus of my staff do the review. I announced the re-

sults of that review with some of the reforms and improvements to the program on March 3. Specifically, let me run through a couple of things we announced.

No. 1, the first reform we did was to announce that we would have a project officer in charge of each of these missions. That person would be responsible from the beginning to the end to develop a mission statement to define what the purpose of that mission was going to be, what we wanted to accomplish, what were the criteria for the participation in the trip, and what were the criteria so that the business community would be able to see it in writing up front. Second, we would disseminate this through the Federal Register, the Internet, and through the media to make them aware so that they could let companies know that this mission was going to take place.

The third thing we wanted to do is to make sure, and one of the ways is through this increased dissemination of the knowledge of these trips, that medium-sized and small-sized businesses could have an opportunity to take a look at these trips and see if it was worthwhile for them to participate.

We also wanted to make sure that there would be no partisan politics in any sort of selection, that the career officers or a panel made up of a majority of career officers will make the decision as to who participates in these trips. Also, any of the documents except those that may contain certain proprietary business information or security information would be public so that there would be a transparent and an open process from beginning to end. After the trips, there will be a report so that the public, Members of Congress, and the business community would know what were the goals up front, what was the mission, what was to be accomplished on these missions, and to do a postmission report so that we could see if we accomplished what we thought we would, and make the budgets of those trips public.

There are lots of different trips and trade missions that the ITA is involved in. Obviously, the ones that get the most attention are the ones that the Secretary or the very senior people go on. We support numerous missions throughout the world on behalf of American businesses. We also support many of the State trip missions that are done by Governors and State economic development organizations.

So I think these improvements to the system that were in place are going to help our missions, which are an important part of our trade advocacy and our export promotion.

Senator GREGG. I congratulate you for that effort. I am a strong supporter of the concept of missions, and I hope that the last year or so has not undermined that support, because they are very worthwhile and very appropriate. They do help us do business abroad. We are a global economy, and we need to have that sort of aggressiveness from the Commerce Department. I think it is good that you are setting a standard for trying to make them more clearly nonpartisan and nonpolitical but, rather, substantive.

#### REDUCING POLITICAL APPOINTEES

What percentage of the folks who are Assistant Secretaries in the International Trade Administration [ITA] are political ap-

pointees? I know you are reorganizing the Department and reducing political appointees, and we expect you will be doing that in ITA.

Secretary DALEY. I also announced at my confirmation hearing in January that, in addition to the moratorium on trade missions, that I was going to reduce by the end of 1997 the number of political appointees within the Department by 100, which is about one-third of the appointments to positions. There are about 256 political positions in the Department. By the end of 1997, we will have gotten to 156.

ITA accounts for about 55 of the political appointees in the Department. We have just begun the consultation with the Under Secretaries to try to figure out the most effective means to downsize the political appointees. The two areas that will probably take the bulk of this hit will be in the Secretary's office and ITA because therein lie many of the political appointees that probably should be cut.

These numbers that I laid out have been rather historical, so they go back many, many years as far as the number of political appointees in the Department. It is nothing that just arose over the last couple of years.

ATP

Senator GREGG. On another subject, last year in the report of this committee and the final language of the bill, we directed the National Institute of Standards and Technology [NIST] not to initiate new programs for advanced technology programs, and yet they have done that. My question is: Why?

Secretary DALEY. My understanding, Mr. Chairman, as I spoke with Chairman Rogers is that there was language on the House side and on the Senate side that did not end up in the final piece of legislation. As you know, we feel strongly that this program is very important, and we moved forward because of interest on behalf of the business community and a belief that this is a strong program. We have gone out to the business community within the last 30 days. We are getting a response. Obviously, the grants have not been awarded yet. The process has started, and we feel strongly about this program and look forward, as you can see from the budget, to hopefully increase it over the years.

My understanding is that the language prohibiting any new grants was not in the final bill, and so the decision was made on our part to move forward with new grants.

Senator GREGG. Well, we will certainly make every effort to make it clear this time, assuming there is any money at all. We can redebate that issue, but we have been through it so many times, let us not take the committee's time.

#### STATUS OF AWIPS PROGRAM

Where do we stand with the advanced weather interactive processing system [AWIPS] program, in your opinion?

Secretary DALEY. We have moved forward with 21 pilot systems, which are in the process of being activated right now. If all goes well with the program, we will institute another 18 by the end of the year, around the fall. We have made a commitment to the

House and to you that this program will be capped at \$550 million. We will live within that. I know it has been a long process that has gone over budget and is behind schedule, but we think the program is together.

The inspector general agrees with us. He has raised issues about this in the past, but he believes that the program is on course now, and we feel strongly, as we have from the beginning, that it will be a major plus to our ability to forecast and protect not only property but lives as we move forward.

#### THE 2000 CENSUS

Senator GREGG. Now, the big problem, obviously, with the agency—the big issue not problem—with the agency, is the question of the census; whether we do a statistical analysis or a head count. You had a hearing with Governmental Affairs, yesterday, was it?

Secretary DALEY. Tuesday morning.

Senator GREGG. I have talked to Senator Thompson, and we are going to have to reach some cloture on this. I am not sure that there is any great need to revisit the issue right now. We have talked about it. Just for the record, the hope is that we can take the politics out of it and reach cloture on the issue of what is the best way to proceed. That is my goal and Senator Thompson's goal, and I know that is your goal.

But, in any event, we have to make a decision here, and I think we will proceed under the assumption that before this bill is completed, there will be a decision made on whether we are going to go statistically or head count. We will try to make the call here so that people can start planning.

Secretary DALEY. I would appreciate that, Mr. Chairman. As you know, we feel very strongly, as I stated to Senator Thompson, that statistical sampling is the way to go for a more accurate and more cost-effective census. But I wholeheartedly agree with you, and once again stress, I think, the importance for all of us to try to work together in this because it is important for the success of the census that the American people have the faith that this is obviously very important and is being done in a way that is not part of a partisan wrangling and is managed well.

This is the largest peacetime mobilization in our country. It is a massive endeavor. Questions have been raised about it. We have serious questions about this. That is why we are taking it so seriously.

If I have the honor to be here 4 years as Secretary of Commerce, this will be the most important thing that I assume will be on my watch. So I feel very strongly that it has to be done right, and I appreciate your words about the census.

#### PTO REVENUE DIVERSION

Senator GREGG. Senator Lautenberg.

Senator LAUTENBERG. Thanks very much, Mr. Chairman.

I am delighted, Mr. Secretary, to see you here. What I have seen thus far indicates that you are not going to let any of the good pace that has existed in the Department for these past years decline in any way. It looks like you have a proactive agenda, and I am pleased to see that.

Every time we hear from Commerce, it is always refreshing and surprising to note the variety of things that you have to concern yourselves, your Department about, whether counting folk, watching out for weather changes, fighting the international marketplace and making sure American companies have a chance to compete fairly, encouraging technology, a variety of things that are very interesting. I am sure that you will bring the right kind of energy and skill to the job.

#### PATENT AND TRADEMARK

I have a couple of questions regarding the PTO. Some of the functions that it serves now are being considered, in my understanding, for movement from PTO to another part of the Department of Commerce. Also, there is the question of diversion of fees. PTO's revenues are derived exclusively from fees that it earns for granting and issuing patents and registering trademarks.

As I understand it, if we divert some of the revenue stream away from the Department, we have a very likely possibility of extending the period for patent pendency to almost twice what it presently is. If anyone on your team there has any comments, please feel free to jump in.

I think that would be a disaster. America's ability to compete now and in the future depends very much on our ability to get technology that we are so good at out into the marketplace, turned into viable products for people. And if we put any impediments in the way of getting these patents considered promptly, I think we run the risk of hindering our competitive edge, delaying developments to maintain our competitive edge, as well as adding nothing to the viability of our leadership.

I would like to get your position, Mr. Secretary, on how you feel about the revenue diversion from the Patent Office. I know that the administration has been looking at it covetously, if I may say. Balancing the budget is the principal occupation here. I think it is important, but I think other things are important as well. So let me not bias your view. [Laughter.]

Secretary DALEY. We do obviously have great concern about the Patent Office in the sense that we share the same concern about these sorts of delays that may occur. We do feel confident that for the year 1998 the revenue request, which is only about 1 percent less than what it was last year will not have any deleterious effect on the operations in 1998.

Obviously, when we begin to go beyond that, there is the concern about delays in our ability to grant patents. Bruce Lehman runs a great shop. We are taking a look at it to try to strengthen this to take the PTO and make it a performance-based organization. There is legislation that obviously you have been involved with that has been introduced and marked up in the House, H.R. 400. We have talked to the committee and the Members, the sponsors of that legislation about their concerns also about the funding needs for PTO. We share the same concerns you have.

As I said, for 1998 we think we are able to keep the fine service that we have given our taxpayers. We have talked to Chairman Hyde on the House side about that legislation to see if we can work out some arrangement for out-years. But we believe a PBO, per-

formance-based organization, will make PTO operate better, keeping the policy functions within the Department, and be able to run basically the backroom operations in a more businesslike manner. But we share the same concerns you have, sir.

Senator LAUTENBERG. Mr. Secretary, however, based on the expected revenue stream and, again, if there is a diversion, would it be correct for me to say that you have not been able to put the full complement of examiners that you need in the Department in place, that prospects for keeping staff at a full performance level are decreasing? What does that do to the process of moving patents along?

Secretary DALEY. Well, obviously, we would have to look at the personnel situation. We would have to look at some of the plans which we already have for purchase of new equipment and more modern technologically advanced equipment that would help the process along and shrink the pendency periods. All of those would be issues that we would have to reexamine if these funds are not there and see if we could manage ourselves better through that. Obviously, it is a major sum of money.

Senator LAUTENBERG. Mr. Secretary, I do not want to put you at odds with the President, but if, in fact, it appears that the Patent Office will not be able to have the complement of skilled personnel that it needs, the diversion of funds will present an obstacle to good, efficient service, then I would say this: You would have to make that as clear as you possibly can so that we can focus on the costs of not doing it fully, not funding it fully, because it is not without some pain.

I come from a State that has the third highest patent production in the country. We are ninth in size, but we are a highly technological place. And we need to be able to move these things along, I think. Again, it is not only New Jersey, but it is very much the country that depends on our capacity to be able to get things patented and registered, protect the efforts with rewards that ought to be there. And if we do not have it, it presents a situation, one that I am prepared to take up the struggle for. I hope that you will be able to make the case—again, not wanting to put you in a difficult position.

Secretary DALEY. I appreciate not wanting to get me at odds with the President after 5 weeks on the job.

Let me just mention one thing that has been noted to me, Senator, and that is the revenue stream as it exists under our budget plan. In 1998, the revenues will be \$656 million; by the year 2000 it would rise about 40 percent to \$900 million. So it is a rather substantial rise. But we do share the same concerns you do, and the people at PTO obviously do, trying to keep some of these potential increases under control.

Senator LAUTENBERG. You have looked at my legislation to make the Patent Office a Government corporation.

Secretary DALEY. Yes.

Senator LAUTENBERG. Have you reviewed it enough to comment on it at this juncture?

Secretary DALEY. I would like to refrain from commenting specifically on it yet, Senator. I have just begun to be briefed on it and

would like to work with you and your staff to try to provide comments on it.

Senator LAUTENBERG. I would look forward to that. Thanks, Mr. Chairman.

Senator GREGG. I am going to exercise the prerogative of the Chair, if that is all right, and recognize the chairman of the committee, who is kind enough to join us. Although we do work by first-come, first-served, if you have questions——

Senator STEVENS. I have no specific questions right now. I was just trying to get a feel of what was coming off here.

Thank you very much.

Senator GREGG. Senator Inouye.

Senator INOUE. Thank you very much, Mr. Chairman.

Before I proceed, I believe that this is the first meeting that Senator Hollings has missed since he has become a member of this subcommittee, and he has asked me to convey his regrets and apologies. But as you know, he is very busy at this moment.

Senator GREGG. He is amending the Constitution; that takes a higher priority. [Laughter.]

Senator INOUE. But, Mr. Secretary, he wanted to be here, and he sends his best wishes to you, sir.

Secretary DALEY. Thank you.

#### TOURISM

Senator INOUE. I have several questions. If I may, I would like to submit them in writing. But I will ask a couple of them at this point.

Tourism is the world's largest industry. I think last year it brought in about \$3.8 trillion and hired more than 250 million people. We are considered about the wealthiest in the world, and yet we spend less per capita than just about every country in the world. Vietnam spends more than we do, and Burma, of all places, spends more than we do. Russia, which is supposed to be on the verge of bankruptcy, I think spends about 10 times what we do. The Irish spend about 14 times what we do.

I am wondering if we cannot recognize the importance of this industry and give it a little boost.

Secretary DALEY. Senator, I know we had this conversation in one of our meetings, and I appreciate your bringing it up again.

I had the opportunity about 2 weeks ago to speak at the Travel and Tourism dinner. There were about 1,400 representatives, a very enthusiastic group. They brought up some of the same concerns. I reiterated to them this administration's commitment in looking for opportunities which we can promote. Obviously, it is the industry which does, as you say, employ a tremendous number of people. It also provides tremendous entry level opportunities for people today. The tourism industry has also been very supportive of the President's plans to try to move people from welfare to work. There are real opportunities there.

As you know, there was a White House conference last year on travel and tourism, and we are looking for ways to implement some of the recommendations from that.

I made the suggestion in our trade mission review that we make sure that those members of the travel and tourism industry take

a look at some of these missions to see if there are opportunities for them to join me and other missions that go out of our Department. We must make sure that we can spread the word about the opportunities for people around the world to come here. Obviously, it is a big business, and we share the same concerns you do.

I am very much committed to spending time on this issue because it is a major employer. It was described to me as kind of the Rodney Dangerfield of sectors. Other sectors get much more publicity than the travel and tourism industry does, but there are few that employ and give the opportunities for job advancement from entry level to the senior positions in the travel and tourism industry.

#### PUBLIC BROADCASTING FACILITIES, PLANNING, AND CONSTRUCTION

Senator INOUE. It gives me some hope now.

For the past 25 years, as you know, the Congress and this Nation have supported public broadcasting, and one of the important programs in public broadcasting is what we call PTFP, facilities programming. I note that your fiscal year 1998 budget does not include any funding for this program, and for fiscal year 1997, though we appropriated \$15 million in grants, none of these grants has been awarded. And yet I gather that you have already received over 220 applicants.

Why is this being held up?

Secretary DALEY. To be honest with you, Senator, I do not know the answer as to why it has been held up. I do know that we have not moved forward with the \$15 million program. We obviously have tremendous support. The administration supports public radio and television to make sure it is available to all. Right now public television is available to about 90 percent of the population and public radio to about 85 percent. So there has been pretty much total saturation. I do not know the answer, and I will get back to you as to why those grants have not been awarded.

Senator INOUE. I would appreciate that. I thank you very much. And, Mr. Chairman, if I may, I would like to submit some written questions.

Senator GREGG. Absolutely. Of course.

Senator INOUE. Thank you, sir.

[The information follows:]

#### AWARDING 1997 PTFP GRANTS

The filing deadline for the 1997 grant round was February 12, 1997. A total of 220 applications is received. We anticipate awarding the fiscal year 1997 grants in mid-August 1997.

Senator DOMENICI. Mr. Chairman, might I inquire, are we at a point where the Secretary has already testified?

Senator GREGG. Yes; the Secretary was kind enough to give us his thoughts, and now he is taking questions.

Senator DOMENICI. Well, first, Mr. Secretary, I hope you are still enjoying your job. [Laughter.]

Secretary DALEY. I am.

Senator DOMENICI. I have not had a chance to meet with you. On two occasions, you were so gracious and were scheduled to come to my office, and I had to break the appointments. I try my best. Per-

haps when a couple more months pass, you will not need to talk to me. You will have everything you need, and you will not hear—

Senator GREGG. The day you do not need to talk to Senator Domenici is the day you are in big trouble.

Secretary DALEY. I will probably be out of a job then.

#### BUDGET RESTRAINTS

Senator DOMENICI. No; I tell you, I do not know what our chairman said, but I want to tell you something that I really believe. I thought there was a chance to get a budget agreement with the President. However, after what I have heard over the last 36 hours, I do not think there is a chance of getting an agreement with the President.

Now, I note with interest that your Department's budget has a 12.5-percent increase—12.4 percent I think is the right number. Well, as much as I like you and would hope you would have a great 4 years, I want to tell you there is hardly a chance that you are going to get a 12-percent increase. In fact, I am looking at the prospect now that the discretionary accounts may be lucky to get a freeze. It is not fair to just tell you that, and it is not fair to say that here in front of all these people without telling you a little more.

The problem is that the President's budget does not cut discretionary spending until the last 2 years of his 5-year budget. Second, the President does not have very many entitlement restraints in his budget—very, very small amounts. In fact, what he thought he had has already been cut one-fourth by the Congressional Budget Office in its reestimate of the President's budget request.

Now, I am preaching the Gospel to you. You already know the Gospel, Mr. Chairman. I think it is good to make sure some of these people take back to this administration the fact that we do not have very many ways to go. I wish there were a lot of ways to go.

Senator GREGG. Before your arrival, Senator, I made the same statement, but I think it resonates a little better coming from the chairman of the Budget Committee.

Senator DOMENICI. Well, I do not want to be repetitious.

Senator GREGG. No; please continue. It is excellent.

Senator DOMENICI. I tell you, when we do not have a chance to take the part of this budget that is out of control and do something about it, and we are being asked to increase almost every single domestic program around, except maybe Veterans, NASA, Transportation, and a few others, then I think it is right to tell you, even though you are not responsible for any of that, what at least this Senator sees as the reality of it all.

I will not go any further, but I will say in addition that it is interesting that if we were to freeze spending, then your accounts are going to be in the same bucket with accounts that are very popular, like the Justice Department and the FBI. You understand what that means. Those are not going to be frozen. They are going to go up. Who is going to freeze the DEA and the FBI? So what happens? It means you have got to take it out of some of these other programs that are in this subcommittee's jurisdiction. That is the

problem when we have them up against each other competing for funding.

#### BXA ENCRYPTION

Now, that is enough of that. Could I ask about encryption for a minute, or do you want to comment? I should not cut you off.

Secretary DALEY. I will convey your comments. Obviously, Senator, we would hope that there can be an agreement reached and obviously that we could move on and get back to good relationships.

Senator DOMENICI. Well, for those around here who wonder where I have been—I will not say more about the President's budget—they may find out here. My time might have arrived to say more about it. I thought we were working on something, so since we may not be, the public may learn a little more about that budget.

On encryption, would you provide the justifications used by the administration for limiting the export of stronger encryption software products?

Secretary DALEY. Senator, this has been an ongoing situation in trying to balance obviously the competitive needs of American businesses to export a product that we are the leaders of the world with, and at the same time, legitimate national security and law enforcement concerns. And we think we have come up with a pretty good plan, a key recovery plan, which can work. There have been four licenses granted, and we think that, after much discussion with the industry, we have come up with a plan. It is not a perfect plan, but it is an attempt to try to balance both of these important needs and concerns.

As you may know, President Clinton appointed David Aaron the Ambassador of Cryptology to discuss with other nations what sort of protections and their concerns on this issue. He has gotten pretty good response in his discussions, no specific actions, but my understanding is we plan to provide briefings on our key recovery plan next week on the Hill for the Members.

Senator DOMENICI. I have five questions on the subject. I will submit them for the record. Will you answer them as soon as you can?

Secretary DALEY. Yes, sir.

Senator DOMENICI. On the census, I think we have clarified that the Bureau of the Census is going to collect information on minority- and women-owned businesses. Have you all the money now in hand, or do you still need more money from the Small Business Administration? Do you know?

Secretary DALEY. I do not know the answer to that.

Senator DOMENICI. Can you get us an answer? We think they have been bothered enough on contributing to the census.

Secretary DALEY. My understanding is we will have to reprogram some funds in 1997.

Senator DOMENICI. Can you tell us for the record how much?

Secretary DALEY. Yes.

[The information follows:]

Work is continuing on the Survey of Minority-Owned Business Enterprises (SMOBE) and the Survey of Women-Owned Business Enterprises (SWOBE) in fiscal

year 1997. In fiscal year 1997, the Administration proposed that SWOBE be funded by SBA, and SBA is submitting a reprogramming to this effect. Census will continue to do the SWOBE on a reimbursable basis. SMOBE is funded by the Census Bureau for both fiscal years 1997 and 1998. Both surveys are done in conjunction with the five year Economic Censuses. For fiscal year 1998, funding for SWOBE is requested as part of the SBA budget request and SMOBE is part of the Census budget request.

#### PROPOSED TERMINATION OF PTFP PROGRAM

Senator DOMENICI. I have a number of additional questions, but I wonder, Mr. Chairman, are you interested in proceeding with some dispatch?

Senator GREGG. Please, if you want, we have plenty of time for you, Senator. Whatever you desire is fine with me.

Senator DOMENICI. Well, let's talk for just a minute about the Public Telecommunications Facilities Program. Do you have that somewhere there?

Secretary DALEY. Yes.

Senator DOMENICI. The budget justification documents indicate that the administration proposes to terminate the Public Telecommunications Facilities Program, stating that the support for public television and radio broadcasters will rest with the Corporation for Public Broadcasting.

Could you explain that to us?

Secretary DALEY. My understanding is we have provided support to make public radio and television available to all. Public television is available to about 90 percent of the population, and public radio to about 85 percent. So we are eliminating a \$15 million program, but obviously support public radio and television in other forms.

Senator DOMENICI. Well, the problem for my State, and I think the State of the distinguished Senator from Alaska, who chairs the Appropriations Committee, I think we have some of the sort of last of the Mohicans. We have some, especially among our Indian people, that have not yet been able to do this. We think that they deserve some consideration, and I assume in marking up the bill we will have to take that into consideration.

I should not be one who is complaining if you finally get down to terminating something, but I do raise the concern.

#### STATUS OF THE TRADE COMPLIANCE CENTER INITIATIVE

What is the status of the Trade Compliance Center initiative?

Secretary DALEY. This was announced last summer by Ambassador Barshefsky and Secretary Kantor. We are committed to strengthening the center to make sure that we have one facility where we can gather all these agreements that have been reached to make sure that in this one organization we are able to find out whether or not these agreements are being lived up to and the American business community would have a place to come to to try to get an analysis of the agreements. It is moving forward.

Our commitments that have been made as far as personnel will be reached by the end of this year. Our commitment is to have 25 people in the compliance center operating. Our first task is to try to gather the data base and to input the information on our trade

agreements. We are committing \$2.5 million and 25 people to the center.

#### PATENT AND TRADEMARK FEES

Senator DOMENICI. Well, this is my last question, and this one concerns me greatly. It has to do with the patent and trademark fees. Has anybody asked about that?

Senator GREGG. Senator Lautenberg brought that up. Yours may be a different topic.

Senator DOMENICI. Well, I guess I am interested in knowing how the Patent and Trademark Office is going to deal with reduced resources that are going to result under the President's proposal, which we understand is to hold \$92 million in surcharges in reserve in 1998 and \$119 million in reserve thereafter, which, in effect, means that the President would spend the surcharges on some other program.

Now, I am not sure this is right, but those who pay the fees say they are told by their PTO officials that this proposal will cancel plans to hire 500 new patent examiners and will more than double the patent waiting time, which already, I understand, is at 20 months.

Secretary DALEY. My understanding, Senator, is that obviously there is concern that using some of the surcharge for deficit reduction has been going on for a couple of years. The current request, which is \$656 million, is only 1 percent less than last year, so for 1998 we think there will be no deleterious effect upon the operations.

We have concerns. We have a higher increase, I believe, in PTO, but we share the same concerns. We are moving forward with legislation and working with the Hill to create a PBO, performance-based organization, out of PTO which will, hopefully, make it more effective. We are also discussing with Senator Lautenberg and House members who have bills similar to that which we are trying to accomplish which do address the surcharge question. We will try to work with Congress to come up with a way to guarantee that the same level of performance that we have been giving to the American people remains. It is a major concern to us also.

Senator DOMENICI. Well, I hope you understand that sometimes in the bowels of these big departments like yours, little entities that are very, very vital—and this PTO is one—that has to be run well. It has to have sufficient talented people. I for one can think of a lot of places I would like to see with less personnel than the Patent Office that has already taken 20 months on average to process a patent. This is vital. So I assume you are worried if you are concerned about keeping that a first-class operation.

Secretary DALEY. Yes, sir, we are. And as I say, we are confident for 1998 there will be no negative effect. There will have to be management issues addressed, whether it is personnel or whether it is purchases of new equipment that have been planned if we do not additional funding. But as of right now, we feel confident that the same level of professionalism can continue.

Senator DOMENICI. Is the Bureau of Labor Statistics in your Department?

Secretary DALEY. No, sir; it is in the Department of Labor.

Senator DOMENICI. I have some additional questions. I will submit them. Thank you very much, Mr. Chairman. Thank you, Mr. Secretary.

Secretary DALEY. Thank you, Senator.

#### MANAGEMENT ISSUES

Senator GREGG. We have about 31,000 people who work at Commerce. Is that right?

Secretary DALEY. Yes, sir.

Senator GREGG. How do you translate policy where you have had fairly—this is not unique to this administration—but you have a fairly consistent turnover in the leadership of Commerce down to the operating level and staff level of an agency that large? What is your game plan for getting that sort of responsiveness, finding out where it works, and where it does not?

Secretary DALEY. After 5 weeks of being there, Senator, it is one of the challenges that I see. Obviously, you do it through the structure. We have a structure with about five Under Secretaries, most of whom have been in this Department now for just about all the 5 years. We will be announcing, hopefully, shortly, a Deputy Secretary who will basically take the role of a chief operating officer to be involved in a lot of management issues, many of which have been questioned by the Hill when there have been questions about the Department.

It is probably the single biggest concern of someone like me coming into a Department that has such diverse pieces within it, how you communicate with your employees and how you make sure that the missions that they are charged with by the Congress are lived up to. So we will be bringing over a new CFO and Assistant Secretary for Administration. Ray has done a wonderful job, but he wants to go back to his home at NIST. And also a new chief information officer to help us try to communicate, quite frankly, with our employees. But it is the single biggest management problem.

I have made a point of stressing to the Under Secretaries and the Assistant Secretaries that policy alone is not how they will be judged, but they will be judged on what sort of management techniques they use and how effective they are in making sure that the level of service to the American taxpayers and citizens is second to none and is the same level that builds businesses that we so often interact with and are so good at communicating with their customers, that we are more reflective of them than maybe what we have been. It is the biggest challenge I have.

Senator GREGG. Well, I think it is. I know it is your biggest challenge, and obviously it will be the biggest reward.

Secretary DALEY. Also, Mr. Chairman, I have also begun a series of meetings and conversations with a number of the business leaders who have been successful at restructuring organizations and communicating better with their employees and making sure that they communicate better with their customers in trying to learn from their experiences to see if we can duplicate any of that in the Department.

Senator GREGG. Senator Bumpers, did you have any thoughts or questions?

## EFFECT OF PTFP IN ARKANSAS

Senator BUMPERS. Mr. Chairman, I would just like to add my voice to those of Senator Inouye and Senator Domenici about the Public Telecommunications Facilities Program.

Mr. Secretary, when I was Governor of my State, public television only covered central Arkansas when I became Governor. I took a vow we were going to have it all over the State by the time I left office. Just another politician's broken promise. But, in any event, I did all I could do, and we began to get some money from the PTFP program. And, of course, not too long after I left office, we did, in fact, have 13 transmitters. The whole State was covered.

This has been a particularly helpful program to us. Arkansas has received about \$1 million under this program since 1992. In New Hampshire about \$600,000. And those are small amounts of money the way we talk about money around here, but those small amounts do a tremendous amount of good for small States such as mine.

## WEATHER STATION CLOSINGS

The second thing I want to say is I am terribly troubled about closing all these weather stations, and I am particularly troubled about the one in Fort Smith, AR. Last year the chairman was very generous in helping me get money for a new weather station to serve Fort Smith. They had a terrible tornado there. The damage was something like \$200 million, and they got almost no warning.

And so after talking with the Weather Service a number of times and after the tornado had occurred, they agreed to use some money they had, if Congress had no objection, to put a new doppler radar in, which, hopefully, would cure that problem.

Fort Smith is in a very unique position, and that is 20 miles from my home town. And I can remember when I was raising my family being totally dependent on Fort Smith television and Fort Smith weather to tell us when to go to the storm cellar. People who do not live in tornado alley do not know how terrifying that can be.

Fort Smith suffered one of the worst tornadoes in history of the State back in 1980, somewhere along there. They are right in the middle of tornado alley, and as I say, it was just—it was last April, and they had this terrible tornado, with almost no warning whatever. And we had all that sophisticated doppler radar in Tulsa.

So while they are in the process of putting up a new doppler radar there, which they hope to have operational on an experimental basis by the end of this month, we have got 160 local weather stations scheduled for closing. The Fort Smith local station last year did not have the authority to push the button, and yet they had 150 spotters. And Fort Smith, incidentally, is surrounded by mountains on the southwest side; tornadoes always approach cities in Arkansas from the southwest moving northeast. And when I think about the tornadoes we had 2 weeks ago, people got as much as 31 minutes' notice.

Of course, how much notice you get all depends on the form of the tornado. I understand that. But everybody got between 11 minutes and 31 minutes notice in that terrible tornado that went across my State about 10 days ago—sorry, 2 weeks ago this coming

Saturday. But Fort Smith got none last year. They are absolutely convinced. People in that city are probably more paranoid than anybody in the State about tornadoes.

Last year spotters from all over the area were calling in to the Fort Smith station saying, I saw a tornado on the ground here, and I saw a tornado on the ground there and so on. And yet they were not allowed to push the button to alarm and alert people there because that had been left to the jurisdiction of the Tulsa station.

So, Mr. Chairman, I am saying that as much for your benefit as I am Secretary Daley's to say I think we need to look long and hard before we close those local stations. It is a three-man station, but if it would save one life over the next 20 years, it would be money well spent, as far as I am concerned.

Those are my sentiments, Mr. Chairman.

Senator GREGG. OK. Obviously you are concerned about adequate tornado warnings—something this community takes very seriously. We appreciate that. Did you want to comment?

Secretary DALEY. We obviously share the same concern, Senator. There have been public comment periods. We share the same sensitivity. We are very proud of the fact that the warnings gave people in most areas sufficient time in this last tornado, and my understanding is that Nexrad will be built in Fort Smith. I do not know the time this will be finished and operating next month.

Senator BUMPERS. We are very grateful for that. Don't misunderstand me.

Senator GREGG. Well, we appreciate your being here. I did notice, in going through the numbers, that the National Oceanic and Atmospheric Administration [NOAA] number was increased by, I think, \$103 or \$107 million. I have a sense—and you do not need to comment on this—that that was done out of a bit of gamesmanship. This committee, as everybody knows, is very committed to having a strong NOAA. The problem is, of course, when those things happen, this committee is going to put the money back. We are going to make sure that NOAA is adequately funded. But it comes out of other accounts in an arbitrary way rather than in a way that might be consistent with policies which you might be most comfortable with. My suggestion would be that your pencil pushers go back and take a look at that and figure out where they want that money to come from.

Secretary DALEY. My understanding, Mr. Chairman, is that NOAA is increased by \$79 million in our 1998 budget.

Senator GREGG. We have it down at \$103 million. We will have to check that. If that is the case, we will be happy to correct our thoughts on that.

Secretary DALEY. Fine.

#### ADDITIONAL COMMITTEE QUESTIONS

Senator GREGG. I would ask unanimous consent that questions given to me by a variety of Senators also be included in the record. I believe there is no objection.

[The following questions were not asked at the hearing, but were submitted to the Department for response subsequent to the hearing:]

## QUESTIONS SUBMITTED BY SENATOR PETE V. DOMENICI

## ENCRYPTION

*Question.* Secretary Daley, as you are well aware, we must do all we can to help American companies compete in the global marketplace. With the emergences of new telecommunications technologies and the Information Superhighway, we are now finding a small store in New Mexico is no longer limited by its location. In fact, by using the Internet this shop owner can sell his or her product to people around the world. I am truly excited by the advances in telecommunications because these technologies are opening up new economic development possibilities in rural states like New Mexico. For these reasons, I have cosponsored Senator Burns' Pro-Code Encryption bill. This bill proposes to eliminate Commerce regulations which currently limit American software companies ability to export strong encryption software products. I support this legislation because it enables American software companies to compete in the global encryption market and will help legitimize the Internet as a secure means of conducting commerce.

Would you provide the justifications used by the Administration for limiting the export of stronger encryption software products?

*Answer.* Encryption software can be used to maintain the secrecy of information in ways which could harm national security, foreign policy and law enforcement interests. Encryption products, when used outside the United States, can jeopardize our foreign policy and national security interests. Additionally, when used by international criminal organizations, such products can threaten the safety of U.S. citizens here in the United States as well as abroad. The control of encryption software products is essential to promote our national security and to advance our foreign policy objectives, including protecting the lives and property of U.S. citizens.

*Question.* Understanding the law enforcement concerns regarding stronger encryption, do you believe this policy is effective in curbing the criminal uses of stronger encryption? If so, can you provide specific examples?

*Answer.* Encryption products will more and more be found operating within a larger communications network. A global network in telecommunications already exists and we can see the outlines of a larger global information infrastructure emerging being built upon this. Criminals will use this network as they use telephones today. If the basis of this network is recoverable encryption for e-mail, home banking and for transfers of data, then law enforcement will continue to have the access it has today, to electronic surveillance as a key tool for carrying out its public safety mission and combating criminals and terrorists.

*Question.* With almost 500 different software products with stronger encryption capabilities being sold in over 28 different countries, how do you expect your policy to be effective in curbing the criminal uses of stronger encryption? If so would you please explain your answer?

*Answer.* We disagree with the implied conclusion in this question that the encryption genie is out of the bottle. First, many of the surveys which allege widespread foreign availability of strong encryption are based on marketing claims and advertisements. Advertising is not always the best source of information on products. Second, we do not yet see the broad use of encryption products, although this may change in the next few years, but for now the use of strong encryption is not widespread. Finally, one important goal for our policy is to make sure that the growing trend in the market to use recoverable products in building infrastructures for electronic commerce is consistent with public safety and national security. A policy to reinforce this market trend will help channel criminal use of encryption and protect public safety.

*Question.* Is it not true that your current policy is compromising our multinational companies ability to communicate and transfer sensitive data over the World Wide Web without fear of economic espionage? If not, please explain your answer.

*Answer.* We currently allow very strong encryption to be transferred to U.S. companies and their overseas subsidiaries to avoid the problems of espionage and theft of intellectual property you refer to, and our new policy promotes the use of strong, safe encryption by U.S. firms. This is why we have no strength limitation on the types of recoverable encryption products or the kind used by most corporations which can be exported.

*Question.* Understanding a supercomputer can break a 56 bit encrypted message within a day, how can you be confident your current policy is sufficient to protect American industries conducting business over the World Wide Web?

*Answer.* Unfortunately, there is no easy technological fix to the encryption problem, and "supercomputers" cannot easily break 56 bit encryption products. Even if one accepts the "test" which resulted in the breaking of 40 bit encryption in five

and a half hours by a sort of brute force as reliable, our estimate is that it would take more than a year to break 56 bit encryption and 11,000 years to break 64 bit encryption. This is why our policy emphasizes the need to use strong, recoverable encryption to protect the privacy and intellectual property of America in a manner which is consistent with public safety and national security.

SURVEY OF MINORITY-OWNED BUSINESS ENTERPRISES [SMOBE] AND SURVEY OF WOMEN-OWNED BUSINESS ENTERPRISES [SWOBE]

*Question.* I have been approached by numerous minority and women business owners who are very concerned with a Bureau of the Census plan to discontinue collecting data on minority and women owned businesses. In contacting your Department to express this concern, I was informed that these data would in fact be collected in the 2000 census. However, I was disturbed to learn that the Bureau of the Census was seeking additional funds from the Small Business Administration to finance this portion of the Census. Is the Bureau of the Census still seeking additional funds from the SBA to continue collection of these data?

*Answer.* Work is continuing on the Survey of Minority Owned Business Enterprises (SMOBE) and the Survey of Women Owned Business Enterprises (SWOBE) in fiscal year 1997. In fiscal year 1997, the Administration proposed that SWOBE be funded by SBA, and SBA is submitting a reprogramming to this effect. Census will continue to do the SWOBE on a reimbursable basis. SMOBE is funded by the Census Bureau for both fiscal years 1997 and 1998. Both surveys are done in conjunction with the five year economic censuses. For fiscal year 1998, funding for SWOBE is requested as part of the SBA budget request and SMOBE is part of the Census budget request.

CONSOLIDATION OF STATISTICAL AGENCIES

*Question.* The current CPI debate has made us aware of the crucial role economic statistics play in policy making, both in the public and private sector. I think we all agree on our desire to produce high quality statistics across the board, not just in price measurement alone.

There have been suggestions that one way to improve the efficiency of U.S. economic data compilation is to form one main statistical agency which would be in charge of all federal government economic releases. Both Canada and the U.K. have similar organizational structures.

What is your opinion of such proposals?

What are the benefits of having data collection scattered amongst the Commerce Department's BEA and Census Bureau, the Bureau of Labor Statistics, the USDA and many others?

*Answer.* There is certainly room for more active coordination among the Nation's statistical agencies, and consolidating these agencies into a single entity is one way to achieve that coordination. But mere box shuffling will not accomplish the goal of better statistical performance. Too many proposals in the last Congress were driven by the desire to eliminate individual departments and agencies and not by the goal of creating a better statistical system.

I do not support the creation of an independent (as opposed to consolidated) statistical agency, as recently proposed by the National Association of Business Economists (NABE), because I fear that such an agency could quickly turn into a political orphan. An independent agency would lack representation at the Cabinet table, which could limit its ability to secure adequate resources. Moreover, an independent agency would lack political and administrative oversight and accountability. There are other, and more preferable, ways to bring the agencies together if that is the goal.

What will truly improve the Nation's statistical system are adequate resources to continue improvements to the quality of our business statistics, more attention to sound management practices throughout the agencies, and greater cooperation by the various agencies.

The Census Bureau and the Bureau of Economic Analysis share the same constituency that the Commerce Department exists to serve, the American business. The data produced by these agencies is a vital component of the competitiveness of U.S. businesses both large and small. It is not surprising that STAT-USA, the information dissemination arm of the Economics and Statistics Administration, is logging tens of thousands of calls a month. Where better for these agencies to reside than the Department that is solely committed to increasing the competitiveness of American business in today's global economy.

In sum, the Congress, the Commerce Department, NABE and other organizations and businesses share the same goal of improving the organization, management,

priorities and funding of our statistical agencies. I hope that we can work together to pursue these ends.

*Background.*—The Administration and the heads of the various data collection agencies have opposed consolidating the current statistical agencies into one main group. As a substitute plan, the Administration sent a legislative bill to the 104th Congress which would permit data sharing among the agencies. It is entitled the “Statistical Confidentiality Act” and will be resubmitted in the 105th Congress.

NABE has been the most recent group to call for a consolidated statistical agency.

#### ECONOMIC STATISTICS INITIATIVE

*Question.* Mr. Daley, the Department of Commerce is continuing an initiative started in the Bush Administration (then known as the “Boskin Initiative”) that has as its goal the improvement of the quality of data collected that are essential to businesses and policy makers. Although CPI bias makes most of the headlines today, there is clearly a need for continued improvement in all of our economic statistics so they better reflect the increasing role that technology and services play in our economy.

With the Department’s budget, both the Bureau of the Census and the Economic and Statistical Analysis would receive increased funding under such an initiative.

Does the Administration’s 1998 budget request specifically continue the ongoing economic statistics improvement initiative within the Department of Commerce?

*Answer.* Yes. The Administration’s fiscal year 1998 budget request seeks to get the Mid-Decade Strategic Plan initiatives of the Bureau of Economic Analysis (BEA) back on track.

Following its landmark Mid-Decade Review, BEA reprogrammed its work in fiscal years 1995–96, shedding some important, but lower priority programs to make a down payment on the most critical of its Mid-Decade initiatives. As a result, it made significant progress in implementing its strategic plan for improving the national, regional, and international economic accounts.

For fiscal year 1997, however, no new funds were appropriated, and BEA has exhausted the opportunities for making additional cuts in existing programs without jeopardizing its core statistics. Thus, BEA has been unable to undertake any of the major new projects proposed in the fiscal year 1997 budget and is concentrating its efforts instead on building upon last year’s improvements. It has, for example, extended the improvements made to GDP in fiscal years 1995 and 1996 to its GDP by industry estimates and will soon extend them to its capital stock, gross state product, and international estimates.

Now that we are at the point of completing the improvements already in the pipeline, our users are growing restless, waiting for us to go further in implementing our strategic plan. The National Association of Business Economists, which has been a staunch supporter of BEA’s plan and of the improvements to date, has nonetheless noted that “lack of investment in statistical infrastructure has left us with a system that does a better job of measuring the industrial economy of the past than the information economy of the present.” Business Week has published articles and editorials chiding BEA for not moving faster with quality adjustments for high-technology goods and for its failure to develop estimates of the value of computer software. The funding we have requested for fiscal year 1998 will permit BEA to begin work on these and the other major new initiatives which had to be placed on hold last year, as outlined in our budget request.

*Question.* You have requested an increase of \$313 million for work on the Census 2000. Will this amount allow you to avoid the errors inherent in the 1990 census? (Aside: The original 1990 census had a problem with undercounting).

*Answer.* The Bureau has requested an increase of \$270 million for work on the Census 2000. The fiscal year 1998 request is an integral part of the Bureau’s plans for Census 2000 that will produce a more accurate and less expensive Decennial Census with a one-number census that is right the first time. The requested increase will allow us to work on the following activities that have been improved or reengineered to correct problems we experienced in the 1990 census:

*Address List Development.*—The requested funding level will allow the Bureau to begin compilation of the Census 2000 address list in areas where the U.S. Postal Service does not deliver mail using house number/street name addresses; basically, in small towns and rural areas. The Census Bureau expects to complete this listing in fiscal year 1999, which will allow local and tribal governments to review the addresses for their jurisdiction beginning in January 1999. Partnerships with local and tribal governments in reviewing the address list is a critical component in obtaining a complete and accurate address list and, ultimately, in obtaining an accurate census.

*Field Data Collection and Support Systems.*—The requested funding level will allow the Bureau to open, set up, and staff temporary field offices called regional census centers (RCC's) and census field offices (CFO's). These temporary offices are needed to accomplish the improved address listing work.

*Testing, Evaluation, and Dress Rehearsal.*—The requested funding level will allow the Bureau to deploy the full range of Census 2000 activities in the dress rehearsal. Analysis of these operations in a dress rehearsal setting is vital for refining multiple mail contacts, telephone assistance, effective advertising, community-based outreach, and other operations, especially those designed to improve the accuracy of Census 2000 relative to 1990.

*Census Marketing, Communications and Partnerships.*—The requested funding level will allow the Bureau to perform extensive work with a contractor(s) to develop the Census 2000 advertising campaign. The campaign is being designed to reduce the number of households that do not respond to the questionnaire mailings and require costly follow-up visits by targeting people who might not respond otherwise. Experience from the 1990 Census shows that when awareness of the Census increases, response rates are higher. In addition to looking at how messages should be strategically placed on radio, in magazines, on TV, and other media, the Census Bureau will hire "partnership specialists" who will work with state, local, and tribal governments, as well as with community organizations, businesses, churches, schools and local media to make people more aware of Census 2000 and to encourage response to the census. Information obtained from the dress rehearsal will be used to refine the campaign for Census 2000.

*Question.* What has been accomplished by the Census Bureau under the economic statistics initiative to date? What are your primary programs going forward? (Aside: In fiscal year 1998, Census will start to implement a re-classification of industrial codes).

*Answer.* Within available funding levels, we have implemented cost efficiencies in order to redirect funds to improve some of our remaining economic statistics programs. We have:

- Provided significant staff support for the development of the North American Industry Classification System (NAICS), the first total revision of the Nation's industrial classification system in more than 50 years. Canada, Mexico, and the United States formally adopted NAICS on December 10, 1996. The 1997 Economic Census is the critical first step in implementing the NAICS in the Census Bureau's economic programs.
- Expanded coverage for the services sector by increasing the number of industries covered by the Service Annual Survey, as well as by providing receipts information for additional 4-digit service industries, new data for tax-exempt firms in selected service industries and receipts-line information for some presently covered industry groups.
- Implemented the Annual Capital Expenditures Survey, the Government's first statistically rigorous survey of business investment, and initiated a reorganization of our investments program to eliminate duplicate requests while ensuring that data user needs are fully met.
- Developed a monthly trade statistics release that now covers both merchandise trade and trade in services.
- Implemented alternative data collection techniques for the Manufacturers' Shipments, Inventories and Orders Survey as well as developed large company information profiles to increase and improve future survey cooperation.
- Provided estimates of nonresidential reconstruction through an "add on" to a Department of Energy survey of commercial buildings.
- Worked jointly with the Bureau of Labor Statistics (BLS) to improve business list information through BLS-SSEL (Census' Standard Statistical Establishment List) business list match operations.
- Improved the quality of our data on exports to Canada as well as reduced the reporting burden on American exporters by exchanging trade data with Canada (using Canadian import data for U.S. export data and vice versa).
- Implemented a system to provide establishment data to the Bureau of Economic Analysis (BEA) to be matched with BEA's foreign direct investment data to enhance significantly the analytical usefulness of the Government's data on foreign direct investment.
- Began implementation, in conjunction with the U.S. Customs Service, of the Automated Export System (AES), a system to automate totally all export reporting.
- Participated with other Government agencies in the development of legislation that provides for data sharing among Federal statistical agencies. The legislation was introduced in the 104th Congress.

- Implemented a new sample for the Advance Monthly Retail Sales (MARTS) survey which nearly doubles the sample for the automotive group. With the new sample, we have reduced revisions for retail sales and the automotive group. Next fall, we plan to select another new sample based on the results of the 1992 Economic Census.
- Improved the estimates of private nonresidential buildings for the Value of New Construction Put in Place series resulting in an additional \$25 billion for total private nonresidential buildings in 1995. In addition, we changed the methodology for calculating the monthly price index for single-family houses under construction. These revisions bring our series in line with BEA's series on fixed investment which was included in their recent benchmark revision.

Many activities remain to be done, including:

- Continue improvements to key economic indicator data, specifically:
  - Increase the sample size for the advance monthly retail trade survey to further reduce sampling error and monthly revisions.
  - Reevaluate the scope, content and conceptual measure of wholesale trade, and implement improvements to the program based on the current characteristics of wholesalers, their operations and practices. Current measurement concepts have not kept pace with changes taking place in wholesale distribution industries.
- Continue improvements to the construction statistics program in the areas of nonresidential building construction expenditures and pricing information, as well as research into techniques and methods to measure construction at manufacturing and industrial sites. These initiatives address serious deficiencies in the measurement of nonresidential construction; we currently are missing \$20 billion of activity in this sector.
- Continue improvements in the coverage of the services sector, the fastest growing segment of the economy, by: (1) implementing an annual survey of the information sector—data currently available only every 5 years; (2) implementing annual surveys of the insurance and real estate industries—data currently available only every 5 years; and (3) introducing coverage of corporate financial data; there is currently no data available for the service industries.
- Implement fully NAICS in the current economic programs. Additional funding is critical given that in fiscal years 1995 through 1997, we requested \$11.5 million for NAICS but received appropriations of only \$1 million. Lack of funding would jeopardize implementing NAICS into current economic surveys.
- Reduce respondent burden by expanding use of electronic reporting and administrative data; by modernizing and augmenting our computerized business register file as the first phase of re-engineering the collection of data by better matching data requests to company record keeping practices, and by developing new sampling methodologies that spread reporting burden more equitably among small firms. Failure to implement innovative methods that reduce reporting burden would jeopardize our history of high response rates.

*Question.* How much of this year's additional, overall funding request would go toward the economic statistics initiative?

*Answer.* The current economic statistics request for the Census Bureau does not include any additional funds for improvements in economic statistics. Rather, all funds would be used towards funding base economic statistics programs. However, the fiscal year 1998 request does include funding for the 1997 Economic Censuses and Census of Governments. These mandatory censuses form the backbone of economic data for the next five years. They are cyclical in nature, and are not program increases.

*Question.* Within the \$6 million increase requested for the Economic and Statistical Analysis division, how much would be devoted to the economic statistics initiative?

*Answer.* Within the \$6 million increase requested for the Economic and Statistical Analysis budget, \$3 million will be devoted directly to the statistical improvement work outlined in BEA's Mid-Decade Strategic Plan and \$1.3 million will be used to complete the migration of BEA's computer systems to the state-of-the-art local area network environment embodied in BEA's Information Technology Strategic Plan. An additional \$1.8 million will be devoted to adjustments to base reflecting the increasing costs for personnel and equipment that will allow us to maintain our pared-down base program unharmed.

*Question.* In your Mid-Decade Strategic Plan, you laid out an ambitious agenda for improving the quality of output and price measures. Which of these initiatives do you hope to pursue in fiscal year 1998?

*Answer.* Our fiscal year 1998 budget request would allow the Bureau to move ahead aggressively with the next steps in its strategic plan, which include improv-

ing our measures of high-tech goods and financial services, implementing the new North American Industry Classification System, developing estimates of the value of investments in computer software, and addressing newly emerging or growing gaps in international finance and trade in services.

Despite a lack of funds, BEA has thus far made substantial progress on our plan for improving the accounts, and our work has been well received. In fiscal years 1995–96, by reprioritizing our work, we implemented several major improvements in the quality of output and prices outlined in our Mid-Decade Strategic Plan. For example, we introduced annually updated, chain-weighted indexes for real GDP and prices, and quality-adjusted and updated price indexes for semiconductors and hospital care, which have won high praise from academics, business economists, and the business press for addressing many of the same issues now plaguing the Consumer Price Index (CPI). Indeed, BEA has come to be regarded as the world's leader in this area: The Federal Reserve recently switched to BEA's "chain-index" method for its index of industrial production, the Bureau of Labor Statistics (BLS) is going to start publishing alternative measures of changes in the cost of living "similar to that used in the chained-price indexes in the National Income and Product Accounts," and a number of G-7 and other countries are looking to BEA for leadership and advice in moving to chain indexes.

In fiscal year 1997, BEA has been unable, without additional funding, to undertake any of the ambitious new projects that were proposed in its fiscal year 1997 budget request. However, as noted earlier, we have been able to make good progress in following up on projects already in the pipeline.

Unfortunately, we have not been able to accomplish as much as we could have were additional funding available. The Administration's fiscal year 1998 budget request would get BEA's Mid-Decade Strategic initiatives back on track. Without such funding, BEA's efforts will increasingly focus on marginal extensions of earlier efforts. In the meantime, the gaps in coverage will only grow larger, as existing problems worsen and new problems emerge as the economy grows and changes.

As I recall, the original economic statistics improvement initiative was envisioned to cost \$230 million over a five-year period (fiscal years 1992–1996) with most of the funding going to agencies of the Department of Commerce, the Departments of Labor and Agriculture as well as to the National Science Foundation.

*Question.* Could you provide for the record, an update on the Administration's plan to carry out this program, including the funding provided to date, the current estimate of the total cost, and funding projections for the next five years?

*Answer.* During the period fiscal years 1992–97 the Bureau of Economic Analysis, part of the Economic and Statistical Analysis budget account, requested appropriations some of which were a repeat request for funds turned down in prior years totaling approximately \$39 million for its economic statistics initiative. During this period, however, only \$2.6 million has been appropriated and another \$6.3 million provided via reprogrammings and transfers. For fiscal year 1998, we are requesting a permanent increase of \$6.2 million, which, except for cost-of-living increases, should go a long way toward enabling BEA to maintain the level of improvements necessary to keep up with the rapidly growing and changing U.S. economy in the foreseeable future. The funding projected for next five years for ESA maintains the fiscal year 1998 requested increase of \$4.3 million for the Economic Statistics Improvement initiative. The outyear amounts for this initiative will be reevaluated based on need with each budget request cycle.

#### TRADE COMPLIANCE CENTER

*Question.* Mr. Secretary, in the Fiscal Year 1997 Commerce, Justice, State, and the Judiciary Appropriations Act, Congress provided \$2.5 million to establish a Trade Compliance Center within the Department. At the time, I thought this was a good idea, and I have advanced some of my own initiatives to improve our ability to assist businesses working across the border and to monitor trade activities.

Could you tell the Subcommittee the status of the Trade Compliance Center initiative?

*Answer.* On July 24, 1996, former Commerce Secretary Mickey Kantor and Acting U.S. Trade Representative Charlene Barshefsky announced the creation of the Department of Commerce's Trade Compliance Center (TCC) under the direction of a new Deputy Assistant Secretary for Agreements Compliance. Over the past ten months, great strides have been made to develop this new organization and activity. To date, the Trade Compliance Center has developed and implemented an ambitious program plan, bringing together an initial staff, conducting upwards of 30 specific investigations of alleged trade compliance problems, developing techniques and approaches to comprehensively monitor foreign compliance with select trade agree-

ments, and developing a prototype database system which will eventually include text of all major bilateral and multilateral trade agreements and other information relevant to monitoring and evaluating foreign compliance with trade agreements.

*Question.* What specific activities will the Trade Compliance Center carry out for the Department?

*Answer.* The new Trade Compliance Center (TCC) has been designed to systematically, comprehensively, and proactively monitor and evaluate foreign compliance with trade agreements and other standards of behavior to ensure that U.S. business and labor receive the full benefits of these international trading regimes. Major projects underway include:

*Monitoring Projects.*—The TCC is responsible for developing methodologies and implementing techniques to systematically monitor and report on foreign compliance with specific trade agreements. Since each agreement is unique, the TCC intends to establish an appropriate monitoring regime for approximately one trade agreement per month. In 1997, the TCC is developing ongoing monitoring projects to track foreign compliance with (1) the World Trade Organization agreements on Trade Related Investment Measures (TRIM's), (2) Trade Related Aspects of Intellectual Property (TRIP's), (3) WTO accession agreements, including a possible accession agreement for China, and (4) the OAS agreement on corruption.

*Investigations.*—To date, the TCC has reviewed 30 specific compliance cases. The TCC expects to open two to three new cases per month. The TCC also investigates and analyzes specific compliance problems, working with American business and labor to resolve compliance disputes, analyze compliance complaints, support USTR analyses and investigations, and develop compliance priorities and propose effective solutions. A fully staffed TCC expects to open as many as 100–150 compliance case files per year.

*Data Base.*—In cooperation with the Department's National Institute of Standards and Technology (NIST), the TCC is developing and implementing a prototype database and computerized information retrieval system which will allow the U.S. Government and the private sector to expand greatly the Nation's ability to deal with market access and compliance issues. This includes, for the first time ever, a comprehensive, on-line database of bilateral and multilateral trade agreements and other information relevant to monitoring and evaluating foreign compliance with trade agreements.

*Question.* Does the Department expect to spend the full \$2.5 million on the Center this fiscal year?

*Answer.* Yes. ITA has allocated \$2.5 million and 25 FTE for the TCC for fiscal year 1997, consistent with the direction of the Appropriations Committee. After payment of its allocable share of ITA and DOC overhead costs, TCC will have a net operative budget of \$1.78 million.

*Question.* Does the Department engage in the practice of "taxing" such funds as so many agencies do to fund other departmental activities at the expense of the program Congress is trying to support? If so, what is the rationale for such "taxing?"

*Answer.* The Department of Commerce does not "tax" programs to fund other Departmental activities. Funds appropriated to ITA are used to carry out program activities, including paying the expenses for executive direction, administration and costs associated with services obtained from the Department in order to operate the various programs. Funding for each of these three categories is included in the appropriated amounts available for each of ITA's four program line items. These three categories of costs are not separately funded in ITA's appropriation.

*Question.* Does the Department expect to achieve the full anticipated staffing level of 25 full-time equivalent positions (FTE's) this fiscal year?

*Answer.* Ninety percent of the fiscal year 1997 TCC operating budget of \$1.78 million will be spent covering personnel compensation and benefits, basic office supplies and infrastructure. This will allow for the hiring of 25 full-time employees, acquisition of basic supplies and equipment for these employees, and modest costs associated with configuring and wiring office space to accommodate the TCC's new data base and computerized information retrieval. Due to the timing during the year in which the hiring occurred, TCC will use approximately 20 FTE in fiscal year 1997. Fiscal year 1998 anticipated FTE usage is 25.

*Question.* How many FTE's are currently devoted to the Trade Compliance Center?

*Answer.* As of March 30, 1997, there are 17 individuals employed in the Trade Compliance Center. Additional staff members are expected to be brought on board in May or June.

*Question.* Would you please provide the Subcommittee with a brief report when the Trade Compliance Center is in place?

Answer. The TCC is in place. The TCC is charged with developing a computerized database of trade agreements, associated documents, analytic data and other information useful to the Government and the private sector in monitoring and evaluating foreign compliance with the trade agreements. The TCC is also responsible for developing methodologies and techniques to systematically monitor and report on foreign compliance with specific trade agreements. Additionally, the TCC is charged with investigating and analyzing specific compliance problems.

To date, the TCC has developed and implemented an ambitious program plan, conducting upwards of 30 specific investigations of alleged trade compliance problems, developing techniques and approaches to comprehensively monitoring foreign compliance with select trade agreements, and developing a prototype database system which will eventually include text of all major bilateral and multilateral trade agreements and other information relevant to monitoring and evaluating foreign compliance with trade agreements. Working together with the National Institute of Standards and Technology (NIST), the TCC has developed a database prototype consisting of 25 trade agreements and a limited number of associated documents. The TCC now plans to have a database consisting of 25 to 50 trade agreements and some additional material available to the public via the Internet before the end of this year. Enhancement of the database with additional information and functionality will come as the TCC reaches its full staffing level.

#### INCREASES IN PATENT AND TRADEMARK FEES

*Question.* Your testimony proposes changes to separate policy functions of the Patent and Trademark Office (PTO) from business operations.

How will this help the PTO deal with the reduced resources that will result under the President's proposals to hold \$92 million in surcharges in reserve in 1998, and all \$119 million in reserve thereafter, which in effect means the President would spend the surcharges on other programs?

Answer. Enactment of PBO legislation would provide us with better tools to function within our budget levels. Under the Vice President's Performance Based Organization (PBO) effort, the PBO would be more flexible and autonomous, and make managers accountable for measurable results.

In the meantime, we can make progress toward this goal of a PTO PBO through administrative actions. We have just submitted a reprogramming proposal with this in mind. This administrative reorganization would be a significant advance toward accomplishing a more business-like operation.

*Question.* Those who pay these fees say they are told by PTO officials that the President's proposal would cancel plans to hire 500 new patent examiners and would more than double the patent waiting time from the current 20 months. Is this true? If so, is it right? If not, what do you expect would occur.

Answer. In the background information that follows, the surcharge amount for 1997 should be \$115 million for a total of \$717 million. For 1998, the change from 1997 is thus a \$31 million increase.

In light of the Administration's priority to reduce the budget deficit, \$92 million in patent surcharge funds are proposed as deficit reduction offsets in 1998. To function within this budget level the PTO is not currently planning to hire new patent examiners in fiscal year 1998. In fiscal year 1999, under the current planning assumptions, the PTO would only hire patent examiners to replace those who have left through attrition. This means that under current assumptions, patent pendency will rise from 20.8 months in fiscal year 1996.

The Administration believes that this is the correct course of action in the context of the higher and bipartisan priority of reducing the Federal deficit and balancing the budget.

*Background.*—In 1997, PTO will collect \$602 million in fees and another \$119 million in surcharges from patent applicants, for a total of \$721 million, of which PTO is allowed to spend only \$663 million. In 1998, the budget would allow the PTO to collect a total of \$748 million (a \$27 million increase from 1997) from applicants, but would allow PTO to spend only \$656 million, a \$7 million decrease from 1997. The surcharge, enacted as part of OBRA in 1990, was "sold" as having the patent community fully fund the operations of the PTO. Now, patent seekers pay more than the costs of PTO, similar to the SEC, and the excess could be considered a tax.

#### CLOSURE OF THE NATIONAL WEATHER SERVICE SOUTHERN REGION HEADQUARTERS

*Question.* Secretary Daley, I have been contacted by constituents who are concerned with the decision by the National Oceanic and Atmospheric Administration (NOAA) to close its National Weather Service (NWS) Southern Region Head-

quarters. This weather center is responsible for managing weather warning, forecast, and observation programs for New Mexico and nine other states.

My concern stems from the important services this office provides New Mexico and the National Weather Service in forecasting and weather warning support. Understanding that this region is the most meteorologically active region in the United States and that over 50 percent of all severe weather events occur in this region, I believe this closure would pose a significant degradation of service provided by the National Weather Service. In addition, I believe Congress made it very clear that any reductions which were required to meet budgetary goals should be applied first to staffing levels at the NWS central headquarters according to a streamlining plan for the NWS central headquarters office.

What are the current plans for the National Weather Service Southern Region Headquarters?

Answer. The fiscal year 1997 appropriation for NWS base operations has resulted in a reduction of \$27.5 million from the fiscal year 1996 enacted level. Of that amount, \$10.5 million was to be taken out of NWS headquarters and central operations in the National Capital area (NCA). NOAA has developed a plan consistent with this Congressional guidance. In addition, and as a result of the remaining shortfall, NOAA will accelerate the planned closure of the Southern Regional Headquarters (SRH) to the end of fiscal year 1997. Under the current plan, NOAA will transfer program management and administrative responsibilities to the Eastern Region Headquarters (ERH) in Bohemia, New York, and Central Region Headquarters (CRH) in Kansas City, Missouri.

To begin the transition process, NOAA will transfer program oversight to the ERH and CRH during the third quarter of fiscal year 1997. Administrative functions and staff will remain in Fort Worth for the remainder of the fiscal year to transition budget, financial, and administrative functions. The remaining SRH staff will be responsible for completing the required closeout and transition functions. NWS will also reassign two employees from SRH to CRH for a period of two years to serve as a transition focal point for hurricane issues and one person will be added to the ERH staff to help with the regional transition. In addition, NWS will transfer one employee from SRH to the State Emergency Management Office in Austin, Texas, for a period of two years to serve as a transition focal point for emergency management issues. A summarized schedule of sample activities and tasks is as follows:

- announce regional realignments (April);
- compile vacancies, reassignments, voluntary separations (March-June);
- reconfigure Central and Eastern Region Communication Networks (April-June);
- reassign NOAA administrative support responsibilities;
- delegate budget and personnel authority to CRH and ERH (May);
- implement new regional boundaries and transfer hydrometeorological program (July);
- arrange for transfer of space to GSA (July-September); and
- closeout administrative functions (October).

A more detailed transition plan has recently been submitted to Congress, entitled "Report on Transition of Southern Region Headquarters and Regional Realignment."

*Question.* What are the current plans for streamlining the National Weather Service other than closure of Southern Region Headquarters.

Answer. As part of the Strategic Plan for the Modernization and Associated Restructuring, the NWS intends to streamline all aspects of its program operations. Under this plan, NWS will streamline its headquarters operations, centralized operations and support and field operations to optimize efficiency and effectiveness. More importantly, the local warning and forecasts of the NWS will reap the greatest benefit from the Modernization through improved warning lead times for severe weather and better accuracy and timeliness for local forecasts. The details of these plans are outlined in the National Implementation Plan (NIP) which is updated and submitted to Congress on the annual basis.

As a result of lower funding levels in fiscal year 1997, NWS plans to implement a number of additional streamlining activities. Specifically, NWS will (1) accelerate reductions in headquarters, central operations and support staffing levels and; (2) re-engineer certain program operations. NWS will accelerate planned reductions in headquarters employment levels by 113 positions by the end of fiscal year 1997. These reductions will advance, up to four years, the NWS strategic plan goal for streamlining its headquarters personnel levels.

NWS will also streamline other headquarters activities. Starting in fiscal year 1997, the NWS will overhaul its use of headquarters management support contracts focusing on only those contract tasks that directly support NWS operations. The NWS will also re-engineer program operations by reducing non-operational travel

and central administrative support, and outsourcing support for central computer operations. In total, these streamlining actions will result in over \$11 million in permanent savings to NWS base operations.

NOAA has also identified approximately \$9.7 million in pay-related inflationary costs and \$5 million in buyout/RIF costs that must be absorbed by the NWS in fiscal year 1997 bringing the total budget reduction to \$42.2 million. In order to offset these costs, NWS reduced staffing levels outside NCA including the National Centers for Environmental Prediction (NCEP), further reduced National Buoy Center sensor development activities, and reduced allocations to the NWS Regions and NCEP.

*Question.* Is there currently a streamlining plan in place for the NWS Central Headquarters.

Answer. Yes, as part of the overall personnel streamlining plan, the NWS has developed a plan for streamlining personnel operations at NWS headquarter offices.

*Question.* If there is in fact a streamlining plan for the central office, would you provide me with a detailed summary of those plans?

Answer. Due to the extent of the fiscal year 1997 accelerated personnel reductions, each NWS headquarters office is revising its staffing plans to support future "modernized operations." Upon final approval by the Administration, a detailed summary of these plans will be provided to Senator Domenici's Office.

#### PUBLIC TELECOMMUNICATIONS FACILITIES PROGRAM [PTFP]

*Question.* Secretary Daley, the Administration's fiscal year 1998 budget proposes to terminate funding for the Public Telecommunications Facilities Program (PTFP), which provides grants to public radio and TV stations for equipment. The PTFP program was funded at \$15.25 million in fiscal year 1997. As recently as fiscal year 1995, PTFP received \$29 million.

Mr. Secretary, I have been a longtime supporter of the Public Telecommunications Facilities Program because it is an important source of funding to rural states like New Mexico. PTFP grants enable local broadcasting stations to provide quality programming to populations that are generally underserved.

The budget justification documents indicate that the Administration proposes to terminate the PTFP program, stating that the support for public television and radio broadcasters will rest with the Corporation for Public Broadcasting. Could you please explain how the Administration envisions that such support—for actual facilities and equipment—will continue through CPB?

Answer. The Department of Commerce understands that there is no legislative guidance for Corporation for Public Broadcasting (CPB) to provide funds for public broadcasting facilities and equipment. CPB, if given such authority, will be required to develop their own mechanisms and the necessary expertise in these areas.

*Question.* Do you think that public broadcasting infrastructure in New Mexico and throughout the country can be sustained without federal support?

Answer. In the past, there has been demonstrated demand for Federal support for public broadcasting. Based on the CFB Presidential request, we would expect the agency to sustain this support.

*Question.* I have supported past efforts to provide distance learning opportunities to rural areas and some such projects have been successfully supported in New Mexico with PTFP funding. For example, the Hispanic Educational Telecommunications System received its first grant in 1995. \$1.1 million was awarded to equip nine schools.

The Northern New Mexico Network for Rural Education received a grant of about \$756,000 to link additional sites with this system and the American Indian Higher Education Consortium, which was also equipped through PTFP. I know additional tribal schools in New Mexico would like to link to this network.

Mr. Secretary, you talk about the importance of partnerships. The PTFP grants are partnerships because state and local matching funds are provided under this program. Why aren't these partnerships a priority for the Administration?

Answer. Partnerships formed through PTFP projects have been an important element for the program. They have been a sign of community support for the public broadcasting stations and distance learning facilities that are funded through PTFP. If Congress supports the termination of PTFP, we hope that public broadcasting stations will strengthen their relationships with non-federal partners as they find new ways to sustain their facilities.

*Question.* The budget documents also indicate that the termination of PTFP is proposed due to changing national priorities. I note that the budget also proposes a \$14.5 million increase for the President's information infrastructure grants program. I know that the "information superhighway" is a priority for the Administra-

tion, but is it realistic to assume that rural areas will be served on the “information superhighway” in the near term?

**Answer.** The Information Infrastructure Grants program is helping to develop a national information infrastructure that is accessible to all citizens, in rural as well as urban areas. In 1996, almost 90 percent of the program funds went to projects serving rural America or traditionally underserved Americans living in urban areas. Since its inception, the Administration has requested more funding for the Information Infrastructure Grants program than Congress has appropriated. The additional funds will allow the program to fund more models of information infrastructure and reach more areas of the country in order to further encourage replication and infrastructure development across the Nation, particularly in underserved areas.

**Question.** Is it your assessment that information infrastructure grants will truly meet the need for basic infrastructure to serve rural areas as the PTFP program has succeeded in doing through its support for public broadcasting stations?

**Answer.** The information infrastructure grants program could not provide enough funds and is not designed to ensure that every rural community’s basic information infrastructure needs are met. The program funds model projects that show these communities how they can develop effective information infrastructure and apply technology to improve and expand valuable services to the community. By evaluating these model projects and disseminating their results, the program helps other communities to learn from the program’s grant recipients as they develop their own information infrastructure.

**Background.**—The Administration has proposed both reductions and terminations for the PTFP program, largely focusing its attention on the information infrastructure grants program.

For New Mexico alone, \$1.45 million in grant applications are being submitted for fiscal year 1997 funding with most from schools. Overall, some \$50 million in applications are likely to be submitted for fiscal year 1997 funding which is at \$15.25 million.

#### U.S. INNOVATION PARTNERSHIP

**Question.** The Department of Commerce recently announced the formation of the U.S. Innovation Partnership which was formed to foster economic growth through the development of new technologies. I am interested in this new partnership’s plan to begin developing new programs to stimulate technology investment and access to new technology in rural America. I believe this partnership could be helpful in my initiative to bring Internet related businesses to rural towns in New Mexico. I believe the Internet poses significant new possibilities for rural economic development, however, if rural towns do not have necessary telecommunications infrastructure for data transmissions, our efforts will be in vein.

What agencies and various entities are participating in the U.S. Innovation Partnership?

**Answer.** The U.S. Innovation Partnership (USIP) is a widely-inclusive organization with involvement from both the public and private-sectors. The USIP builds on the recommendations of the Carnegie Commission’s report “Science, Technology and the States in America’s Third Century” and the “State-Federal Technology Partnership Task Force Final Report,” which was produced in collaboration with the National Governors’ Association, the National Conference of State Legislatures, the White House Office of Science and Technology Policy, the Carnegie Commission on Science, Technology & Government, and the American Society of Mechanical Engineers.

The USIP involves many public and private-sector representatives from organizations such as the States Science and Technology Institute, the American Society of Mechanical Engineers, small businesses, universities, and national laboratories. Currently, USIP participation includes the following 20 governors and 13 Federal agencies:

#### *Participating Governors*

Governor Roy Romer, Colorado; Governor John G. Rowland, Connecticut; Governor Carl T.C. Gutierrez, Guam; Governor Benjamin J. Cayetano, Hawaii; Governor Bill Graves, Kansas; Governor Angus S. King, Maine; Governor Parris N. Glendening, Maryland; Governor John Engler, Michigan; Governor Marc Racicot, Montana; Governor E. Benjamin Nelson, Nebraska; Governor Bob Miller, Nevada; Governor Christine T. Whitman, New Jersey; Governor Gary E. Johnson, New Mexico; Governor George E. Pataki, New York; Governor James B. Hunt Jr., North Carolina; Governor Tom Ridge, Pennsylvania; Governor Lincoln Almond, Rhode Island; Governor Gary Locke, Washington; Governor Cecil H. Underwood, West Virginia; Governor Jim Geringer, Wyoming.

### *Participating Agencies*

Department of Agriculture; Department of Commerce; Department of Defense; Department of Education; Department of Energy; Department of Labor; Department of Transportation; Environmental Protection Agency; National Aeronautics and Space Administration; National Institutes of Health; National Science Foundation; Small Business Administration; White House, Office of Science and Technology Policy (OSTP).

*Question.* How do you anticipate this new partnership will foster economic growth?

*Answer.* The mission of the USIP is to achieve new economic growth, high quality jobs, and globally competitive businesses by effectively leveraging U.S. science and technology leadership and resources through partnerships among states, the Federal Government, industry, and universities. The USIP has adopted a number of strategies to fulfill this mission including: build national excellence in manufacturing by supporting development and commercialization of new products and processes; build strategic partnerships among state governments, the Federal Government, industry, and universities; strengthen the national (versus Federal) science and technology system; and define and enhance the role of the states in the national science and technology system by maximizing the return on investment of public and private sector investments in technology and by creating the necessary climate and mechanisms to promote and facilitate innovation in the public and private sectors.

The USIP is still in the process of establishing its work plan. The following are examples of initiatives that are currently being developed by the USIP to foster greater innovation and economic growth in the American economy:

*Experimental Program to Stimulate Competitive Technology.*—Over the past several years, the National Science Foundation's Experimental Program to Stimulate Competitive Research (EPSCoR) has demonstrated how the states, the Federal Government, and universities can work together to increase the capacity of educational institutions to attract and utilize public research funding. A similar effort is needed to expand that capacity to move the resulting research into the marketplace.

The U.S. Department of Commerce's Technology Administration has proposed to develop the Experimental Program to Stimulate Competitive Technology (EPSCoT). This program will foster development of the indigenous technology assets of states through better integration of local, state, regional, and Federal investments in technology-based economic growth. The USIP plans to involve states up front, in the design stage, of Federal technology efforts; therefore, details of this program will be worked out with representatives from state and local governments, regional organizations, universities, and industry. The fiscal year 1998 budget request to Congress is \$1.65 million. It is envisioned that this effort will help to establish technology development, diffusion, and infrastructure creation practices in the EPSCoR states, which are largely rural, that will then serve as models for other states.

*Expanding the Angel Capital Electronic Network.*—The USIP seeks to involve more states in the ACE-Net, which creates a nationwide Internet-based system of matching "angel"/wealthy individual investors with business savvy and innovative entrepreneurs around the country. Angels currently invest between \$10 to \$20 billion each year in new ventures. However, the process of matching individual investors with appropriate business opportunities is extremely difficult and time consuming. ACE-Net uses Internet technology to bring investors the comprehensive information they need to find investment opportunities throughout the United States quickly and conveniently. This project is being led by the U.S. Small Business Administration. More information is available at: <http://ace-net.unh.edu> and <http://www.sbaonline.sba.gov>.

*Entreworld—Increasing Business Access to Technology Information.*—USIP partners will expand existing Federal science, technology, and economic development information sources on the Internet to include state program information and to be more user friendly to private sector entrepreneurs. Through a partnership with the Ewing Marion Kauffman Foundation's Center for Entrepreneurial Leadership, the USIP will provide easier access for technology entrepreneurs to Federal and state technology information through the foundation's nationally-known website for entrepreneurs, <http://www.entreworld.org>.

*Idea to Market Demonstrations.*—USIP partners will jointly develop and support new models for moving the ideas of individual inventors, university professors, and researchers at national laboratories to the commercial marketplace more quickly and with greater economic impact. The USIP will review practices that stifle innovation and identify incentives that help to stimulate the flow of ideas from individual, university, and Federal labs to the commercial sector. The USIP will foster demonstrations aimed at developing nationwide capacity to support the movement of technology-based ideas to successful market introduction.

*Reciprocity Among States for Innovative Environmental Technologies.*—Regulatory reciprocity among the states will simplify the process of compliance and reduce the cost for companies or inventors to bring environmental technologies to market. The USIP supports new initiatives as well as existing efforts to negotiate reciprocal acceptance among state regulatory bodies of new technologies validated and tested by any one of them. Current initiatives include a six state memorandum of understanding to develop reciprocal data, testing, and eventually permitting arrangements for new environmental technologies and a ten state effort to explore the implementation of International Standard Organization (ISO) 14000 standards, an international performance-based environmental management system.

*Question.* What particular goals have been established with regards to stimulating and providing access to technologies in rural Areas?

*Answer.* While the USIP does not have particular goals for stimulating and providing access to technologies in rural areas, it is anticipated that many of the activities undertaken by the USIP will benefit rural areas. The ACE-Net provides a tool for entrepreneurs located in rural areas to access angel investors throughout the country through the use of the Internet. Likewise, the Entreworld initiative will better link individuals, businesses, and governments, wherever they are located, to Federal, state, and local science and technology resources on the Internet in a format that is oriented to entrepreneurs. And, the EPSCoT initiative specifically seeks to stimulate the role of technology in states that are traditionally under-represented in R&D funding, which often have largely rural economies.

The Economic Development Administration (EDA) of the U.S. Department of Commerce is also involved with the USIP in the area of stimulating and providing access to technologies in rural areas. The EDA provides economic development assistance to distressed areas. In such areas, the EDA helps rural communities incorporate technology as a tool for their economic development by providing funding assistance for communities to plan technology-led economic development and create technology-based infrastructure.

*Question.* Will this partnership be working to improve the inadequate telecommunications infrastructures in rural towns?

*Answer.* A number of USIP partners are involved with telecommunications infrastructure issues. The Commerce Department's Telecommunications and Information Infrastructure Assistance Program (TIAP), which is a highly-competitive, merit-based grant program that brings the benefits of an advanced national information infrastructure to communities and rural towns throughout the United States, provides the most direct means of addressing the issue in the short-term. The EDA also provides funding assistance to communities to plan and build telecommunications infrastructure.

One of the USIP's original task forces was co-chaired by Larry Irving, Assistant Secretary for Communications and Information at the U.S. Department of Commerce, who oversees the TIAP program, because USIP representatives identified telecommunications infrastructure as an important issue that should be addressed by the USIP. This task force allowed state leaders to work closely with Federal officials to identify the most important issues facing the States in the area of information infrastructure.

Additionally, at a number of regional meetings held by the USIP, local officials discussed how new information infrastructure resources could be more user friendly to entrepreneurs, people working in small businesses, rural users, and to local governments. The USIP is currently developing proposals in the areas of information infrastructure and electronic commerce as well as continuing to engage Federal, state, and local officials on these issues.

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#### QUESTIONS SUBMITTED BY SENATOR ERNEST F. HOLLINGS

##### CENSUS BUDGET

*Question.* This year's appropriations for the Year 2000 census totals \$84 million. In the fiscal year 1998 budget you have submitted, you are requesting \$374 million, an increase of \$290 million. Within two years you are proposing over \$2.2 billion. Assuming sampling, the total cost of the census will be \$4 billion.

My understanding is that even these numbers may be understated and that the Census has recently come up with new estimates. Could you tell us how much more you think it will cost based on these WESTAT labor surveys?

*Answer.* The Bureau is currently assessing the cost effects of the WESTAT study recommendations. We will share our findings with the Congress as soon as the assessment is complete.

*Question.* In constant dollars, that is adjusting for inflation, the 1960 census cost \$11 per housing unit. In 1970 it had gone up to \$19 per unit. In 1980 it increased to \$20 per household and \$25 per household in 1990. I guess that means we are looking at over \$35 in the year 2000.

Why is the cost for the decennial census increasing so much after adjusting for inflation?

*Answer.* A major goal in planning Census 2000 has been cost reduction. Although the 1990 census cost \$25 per housing unit in 1990 dollars, we expect Census 2000 will cost less per housing unit, in 1990 dollars, despite a steady decline in public cooperation and the fact that wage rates for temporary field staff have increased faster than the rate of inflation.

Many factors other than inflation affect the cost of a decennial census: an increase in the number of housing units; declines in mail response rates/public cooperation; attempts to improve the overall count in a time of reduced mail response, poorer cooperation with census-taking, and changes in the mobility of the U.S. population—these changes require more follow-up, longer field work, and more temporary census offices; attempts to reduce the differential in the count among population groups, which involved special targeted procedures for counting as well as expensive, intensive follow-up in difficult areas—our plan for Census 2000 reduces the expense of the intensive follow-up; attempts to obtain better small-area counts, which involved improving address lists and developing an accurate electronic mapping system.

*Question.* Could you please discuss some of the measures that you are instituting to try to bring down the cost of the census.

For example, I understand that you are intending to spend \$100 million for advertising on the assumption that for every 1 percent of the population that mails back their census forms, you will save \$25 million.

*Answer.* The Census Bureau will implement the following operations designed to reduce the cost of Census 2000:

- Work with the U.S. Postal Service, as well as state, local and tribal governments, to improve the quality of the address list. In 1990, the Census Bureau compiled the address list from costly private sources without help from these knowledgeable partners.
- Use U.S. Postal Service information to identify vacant housing units. In 1990, enumerators visited every housing unit from which a completed form was not received, even those the Postal Service identified as vacant.
- Use repeated mail contacts and motivating messages, in addition to forms that are easier to read and complete, increase the chance that households will return completed forms and avoid more expensive personal visit follow-up.
- Use state-of-the-art technology—electronic imaging and intelligent character recognition—to “read” completed forms and create data files ready for tabulation. The 1990 census was microfilmed and key entered. In Census 2000, the forms will be scanned directly into computer files ready for tabulation.
- Offer “point and click” data tabulation so data seekers can access the Census 2000 data and assemble their own data tables instantly. This process is responsive to data user requests. It is less costly and time consuming than publishing a large number of printed paper volumes that still do not provide the information needed by local governments.
- Make personal visits to a scientifically selected sample of remaining non-responsive households to ensure direct contact with at least 90 percent of households in each census tract and use that information as a basis for completing the follow-up operation. This operation will produce more accurate results less expensively and more quickly than the method used in 1990.

#### SAMPLING

*Question.* There is a lot of controversy up here regarding sampling to make the census more accurate. The House full committee chairman has called it “witchcraft.” As I understand your plan it is to keep going back and trying to count everyone, and when you’ve finally gotten to a 90 percent response you would use statistical models for estimating the last 10 percent.

As I understand it, the Commerce Department uses sampling for a number of surveys it carries out. I have a list here of 100 regular surveys that the bureau performs using statistical sampling. The economic projections that are announced every month, upon which Alan Greenspan determines interest rates and the stock market goes up or down—that is based on sampling isn’t it Mr. Secretary?

*Answer.* Yes. Statistical sampling is used in almost all of the economic and demographic censuses and surveys that the Census Bureau conducts, including the Current Population Survey, the Survey of Income and Program Participation, the

Consumer Expenditure Survey, the Census of Governments, the Annual Survey of Manufactures and the Monthly Retail Sales Survey. Statistical sampling is a known, scientific, quantifiable and transparent method for collecting data that are important for businesses and policy makers.

*Question.* Why do you believe that a census using sampling would be more accurate than a “100 percent” census?

*Answer.* As determined by the National Research Council, traditional methods of enumerating the population have reached the limit of their ability to produce an accurate count. For example, in the 1990 census after repeated attempts to follow-up on nonresponding housing units, the Census Bureau used less systematic techniques, such as proxy responses and final attempt information (e.g. asking the neighbors) to conclude our accounting of nonrespondents. Statistical estimation techniques have long been used in the census for a number of purposes, including close-out procedures, determining vacant units, and imputation of missing census responses. The use of statistical methods to sample nonrespondents and to improve the accuracy of the census is formal recognition that modern statistical procedures can improve the process, reduce costs, and produce better data for the Nation as a whole, and for all component population groups, by reducing the differential undercount.

*Question.* How much do you estimate that the sampling will save compared with a “100 percent” census?

*Answer.* There two integral components to the Bureau’s plan for using statistical sampling in Census 2000—sampling for a nonresponse follow-up (SNRFU) and integrated coverage measurement (ICM).

If the Bureau were not to use SNRFU in Census 2000, the estimated cost would increase by \$400 million, as additional field enumerators would be needed to attempt to conduct field visits. This would have no appreciable impact on the quality of data, at any level of geography, in Census 2000.

If the Bureau were not to employ the use of the quality check survey—ICM—the Bureau would save an estimated \$200 million. However, such a decision not to incorporate ICM would dramatically decrease the quality of data for Census 2000 at all levels of geography—national, state, Congressional districts and census tracts.

#### U.S. AND FOREIGN COMMERCIAL SERVICE [US&FCS]

*Question.* Please provide the number of US&FCS American employees and foreign service nationals by nation for the past four years.

*Answer.* The following chart shows the number of Americans, foreign service nationals, and personal service contractors for each year during the period 1994 through 1997.

Region	Country	As of May 1997			Fiscal year 1996—September 30, 1996			Fiscal year 1995—September 30, 1995			Fiscal year 1994—September 30, 1994		
		Amer.	FSN	PSC's	Amer.	FSN	PSC's	Amer.	FSN	PSC's	Amer.	FSN	PSC's
ANESA	Algeria .....	3	9	5	2	1	1	2	1	1	2	1	1
WH	Argentina .....	3	11	3	3	14	8	3	8	5	8	8	2
EAP	Australia .....	1	5	2	2	6	2	1	15	.....	3	15	.....
EUR	Austria .....	2	8	.....	2	8	.....	2	7	.....	1	5	.....
EUR	Belgium .....	3	4	.....	3	4	.....	2	8	.....	2	8	.....
EUR	Belgium-JUSEC .....	3	4	.....	3	4	.....	2	5	.....	2	4	.....
WH	Brazil .....	7	14	35	6	14	14	5	20	11	5	17	1
EUR	Bulgaria .....	1	3	4	1	2	4	1	2	2	1	4	.....
WH	Canada .....	6	18	7	5	19	3	4	20	1	5	21	.....
WH	Chile .....	2	7	5	3	7	5	1	8	.....	3	9	1
EAP	China .....	13	.....	50	10	.....	46	12	6	39	8	5	26
WH	Colombia .....	2	8	1	1	9	2	2	9	1	2	10	2
WH	Costa Rica .....	1	3	.....	.....	3	.....	1	3	.....	1	3	.....
ANESA	Cote D'Ivoire .....	2	2	4	2	3	4	1	3	2	2	3	1
EUR	Croatia .....	1	1	.....	.....	1	.....	.....	1	.....	.....	1	.....
EUR	Czech .....	1	2	5	2	3	8	2	3	5	2	5	5
EUR	Denmark .....	1	5	.....	1	5	.....	1	5	.....	1	5	.....
WH	Dominican Republic .....	2	2	4	2	3	2	1	4	1	1	4	1
WH	Ecuador .....	1	4	3	1	5	2	1	4	2	1	4	1
ANESA	Egypt .....	3	8	3	3	7	3	3	8	3	3	8	3
EUR	Finland .....	.....	3	1	.....	4	1	.....	4	.....	1	4	.....
EUR	France .....	5	19	12	5	19	14	5	20	11	5	25	5
EUR	France-OECD .....	1	.....	.....	1	.....	.....	1	.....	.....	1	.....	.....
EUR	Germany .....	7	27	15	10	31	10	11	33	7	11	37	5
EUR	Greece .....	1	8	1	1	8	.....	1	8	.....	1	8	.....
WH	Guatemala .....	1	2	2	1	3	1	1	3	1	1	3	.....
WH	Honduras .....	.....	1	3	.....	2	4	.....	3	2	.....	3	1
EAP	Hong Kong .....	4	6	13	3	9	10	3	12	2	3	11	1
EUR	Hungary .....	2	6	.....	2	6	.....	2	6	.....	2	6	.....
ANESA	India .....	6	16	13	6	17	3	6	17	3	5	22	7
EAP	Indonesia .....	5	7	13	5	12	8	5	13	3	4	13	2

Region	Country	As of May 1997			Fiscal year 1996—September 30, 1996			Fiscal year 1995—September 30, 1995			Fiscal year 1994—September 30, 1994		
		Amer.	FSN	PSC's	Amer.	FSN	PSC's	Amer.	FSN	PSC's	Amer.	FSN	PSC's
EUR	Ireland .....	1	3	2	1	3	2	1	4	1	1	4	.....
ANESA	Israel .....	2	7	1	2	6	.....	1	1	2	1	6	1
EUR	Italy .....	5	19	1	5	20	.....	5	21	.....	5	21	.....
WH	Jamaica .....	.....	1	1	.....	.....	.....	.....	.....	.....	.....	.....	.....
EAP	Japan .....	15	38	6	15	39	1	14	41	1	13	39	1
NIS	Kazakhstan .....	1	2	7	1	2	8	1	5	6	1	4	.....
ANESA	Kenya .....	1	2	.....	1	3	1	1	3	1	1	3	.....
EAP	Korea .....	6	14	8	5	15	5	5	19	3	6	21	.....
ANESA	Kuwait .....	2	3	3	2	4	2	2	5	2	2	5	1
EAP	Malaysia .....	3	6	5	2	7	1	2	8	1	3	7	4
WH	Mexico .....	13	27	31	12	29	32	11	29	15	11	30	15
ANESA	Morocco .....	1	2	2	1	2	2	1	3	1	1	3	1
EUR	Netherlands .....	2	9	2	2	9	2	3	9	1	3	9	.....
EAP	New Zealand .....	1	4	4	1	3	.....	1	4	.....	.....	4	.....
ANESA	Nigeria .....	1	4	4	1	6	4	1	7	4	2	5	4
EUR	Norway .....	1	2	3	1	2	3	1	3	1	1	3	1
ANESA	Pakistan .....	1	6	1	1	7	.....	1	7	.....	1	7	1
WH	Panama .....	1	4	1	.....	4	.....	1	4	.....	1	4	.....
WH	Peru .....	1	1	6	1	3	5	1	2	3	.....	2	3
EAP	Philippines .....	2	6	11	1	6	9	1	7	8	4	7	9
MDB	Philippines/ADB .....	1	2	3	1	2	3	1	2	3	1	1	2
EUR	Poland .....	2	6	1	2	7	4	3	7	3	3	7	4
EUR	Portugal .....	1	6	1	1	6	.....	1	6	.....	1	6	.....
EUR	Romania .....	1	3	3	1	3	3	1	4	1	1	4	2
NIS	Russia .....	8	15	19	9	19	13	9	25	5	8	23	2
ANESA	Saudia Arabia .....	5	14	10	7	16	11	6	20	1	6	21	7
EUR	Serbia .....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	1	.....
EAP	Singapore .....	3	7	6	3	10	7	3	10	5	4	10	1
EUR	Slovakia .....	.....	.....	2	.....	1	2	.....	1	2	.....	.....	1
ANESA	South Africa .....	4	8	5	4	7	.....	3	7	.....	2	7	3
EUR	Spain .....	4	12	2	4	11	2	3	12	1	4	13	1

EUR	Sweden .....	1	6	1	1	7	.....	1	8	1	1	8	1
EUR	Switzerland .....	1	3	4	1	5	2	3	6	2	2	6	1
EAP	Thailand .....	3	9	11	3	11	6	3	12	4	3	12	4
EUR	Turkey .....	2	9	2	3	10	2	3	10	3	3	10	2
ANESA	UAE .....	2	6	1	2	7	.....	2	7	.....	2	7	.....
EUR	United Kingdom .....	5	13	5	4	13	4	5	14	1	4	16	1
NIS	Ukraine .....	2	4	5	2	5	3	2	5	3	2	5	1
MDB	United Kingdom/EBRD .....	1	.....	1	1	1	1	.....	2	.....	1	1	.....
NIS	Uzbekistan .....	1	2	6	1	.....	5	1	2	3	1	1	2
WH	Venezuela .....	2	8	4	2	8	1	3	11	1	3	9	1
EAP	Vietnam .....	2	.....	2	1	.....	.....	.....	.....	.....	.....	.....	.....
Total .....		198	502	399	190	552	296	187	616	190	188	625	142

*Question.* In January 1995, I visited an office building in Johannesburg, South Africa, with Ambassador Lyman and Millard Arnold, Jr., the senior foreign commercial service officer. We visited two floors that were being renovated for the US&FCS. I later learned that the US&FCS decided that it did not like this commercial space and moved to another site in South Africa. I was never informed of this change by the Commerce Department.

What was the cost of the Johannesburg office renovation project? Was there a cost in terminating this lease early, if so what was it? What was the cost of new space that the US&FCS acquired? Please describe the difference in space in square footage or other attributes between the two sites. Is the US&FCS South Africa trade assistance center located in this new facility, and, if not, why? What is the mission of the trade assistance center?

*Answer.* There was no cost to the US&FCS unit for the renovation of the 12th floor in the building where US&FCS Johannesburg was located at the time of Senator Hollings' visit. The up-front cost for the renovation of that space was absorbed by the building landlord at the time the lease renewal was signed in 1994 because the landlord was eager to have a prestige tenant remain in its building in the Central Business District (CBD) of Johannesburg. When US&FCS moved, there was no cost for terminating the lease early.

US&FCS management and post decided to move out of the CBD late last year to better serve US&FCS Johannesburg's business clients who were increasingly reluctant to visit the office downtown because of concerns over crime and the declining infrastructure. Moreover, virtually all our competition had already left the CBD for better locations in the Northern Suburbs or the Midrand area. The U.S. Consulate is in the process of relocating to a new facility in the same general area as the US&FCS office for similar reasons.

The new office site provides greater accessibility, visibility and facilities for expanded business services to American companies. The facility has already provided enough space and versatility for a number of successful single companies and United States Government (USG) events.

The cost of the new office is \$142,527 per year compared to \$50,325 per year for the old office, and the net space at the new facility is 11,302 square feet compared to 6,501 square feet for the old space.

Concerning the Technical Assistance Center (TAC), we hope to establish it under a Memorandum of Understanding with the Agency for International Development (AID) by August 1, 1997. The purpose of the TAC will be to establish commercial linkages between emerging South African companies and U.S. companies as a means toward black economic empowerment and expand U.S. private sector involvement in South Africa's economy, resulting ultimately in helping small and medium-sized U.S. businesses identify export opportunities in the South African market.

We have extended an invitation to the South African Government (SAG) to house the TAC in the new US&FCS facility. The SAG is still in the process of evaluating our offer.

*Question.* Please provide a status report on the International Trade Administration's (ITA) Trade Compliance Center (TCC). Please provide a discussion of the office's accomplishments. What is the difference between what this office does and what the Office of Agreements Compliance in the Import Administration is charged with?

*Answer.* The following is the status report on our TCC. The new TCC is designed to systematically, comprehensively, and proactively monitor and evaluate foreign compliance with trade agreements and other standards of behavior to ensure that U.S. business and labor receive the full benefits of these international trading regimes.

The TCC is developing methodologies and techniques to systematically monitor and report on foreign compliance with specific trade agreements, investigating and analyzing specific compliance problems, working with American businesses to resolve compliance disputes. It also leads Commerce Department compliance advocacy efforts. The TCC works with other elements of ITA to identify compliance priorities, analyze compliance problems, and propose effective solutions, often working in support of the United States Trade Representative (USTR).

The TCC is also developing the government's first comprehensive data base of trade agreements and compliance analyses. This data base, now reaching prototype form, will allow the USG to expand greatly its capability to deal with market access and compliance issues.

Working in conjunction with the Department's National Institute of Standards and Technology, the TCC is developing the Nation's first computerized data base of trade agreements, associated documents, and compliance analysis.

The first requirement is that the data base of trade agreements be complete. About 200 agreements have been identified so far, and it is our expectation that all 200 agreements will be entered into the database by the end of the year, utilizing task forces to accomplish the objective expeditiously. Through May, thirty agreements had been entered into the system.

One of the more innovative aspects of this new program will involve a new kind of public-private partnership. Using the information superhighway to provide data and government assistance directly to businesses, the TCC is developing a new data base of trade agreements, analyses and associated documents to help U.S. companies more readily understand what their rights are and what foreign obligations exist under the wide variety of existing trade agreements. This data base will represent a quantum leap forward in directly helping business gain maximum advantage from the 200 trade agreements and declarations successfully concluded over the past four years. By making this information available in a searchable form via the internet, we will empower businesses to use these tools not only to identify barriers and get help from the USG, but also as a mechanism for strengthening their negotiating positions with foreign governments and businesses. We anticipate an initial launch of public access to this information during the fall allowing us to discover and correct any system difficulties by next spring.

We are also taking steps to establish links from the TCC to the country desks in order to ensure that each and every agreement has an individual specified as responsible for its monitoring. Instruction cables to all embassies are being prepared to introduce the TCC's role and function and to identify the contribution the embassies should make in identifying agreements and compliance problems. Also, we are in the process of working with our trade development industry desks and preparing a letter to industry trade associations inviting each association to set up a compliance liaison function.

#### DIFFERENCE BETWEEN TRADE COMPLIANCE CENTER AND IA'S OFFICE OF AGREEMENTS COMPLIANCE

*Question.* As part of reorganizing Import Administration (IA), the Office of Agreements Compliance was abolished. That Office was charged with monitoring compliance with suspension agreements by which IA suspended its action in exchange for concessions by the foreign firm. The new TCC is designed to systematically, comprehensively, and proactively monitor and evaluate foreign compliance with all trade agreements (other than IA's suspension agreements and other standards of behavior, now handled by another IA unit) to ensure that U.S. business and labor receive the full benefits of these international trading regimes.

I have always strongly supported the US&FCS in its mission to increase U.S. exports overseas. However, I am concerned of reports I have heard that the agency is unilaterally changing its mission to include promoting U.S. investment overseas, including establishing manufacturing overseas. Has there been a formal policy change in the US&FCS or is this an ad hoc policy on a post by post basis? When evaluating whether to provide assistance, how does the US&FCS ensure that it is not exporting U.S. jobs overseas instead of creating jobs here in the U.S.?

*Answer.* The US&FCS remains fully committed to its primary mission of providing export promotion services to U.S. companies as the principal means of increasing U.S. exports. Particular emphasis is placed on encouraging small and medium-sized U.S. businesses to explore trade openings and gain potentially lucrative markets. The number one priority for each of our overseas posts is to promote increased U.S. exports to that country, by providing export counseling and market information to American firms to promote their expansion in the marketplace.

In addition, and in keeping with the Department's international trade priorities, our trade and commercial relations are used to promote democracy, peace and freedom in key regions and countries around the world. In regions where we may assist in securing political stability and peace, as with the Presidential Initiative for Northern Ireland and the Border Counties of Ireland, the US&FCS may become more involved in facilitating contacts to assist U.S. firms in becoming established in the country.

On other occasions, "strategic alliances" may be discussed between U.S. and foreign firms as a means to increase the U.S. company's international posture. Based on the U.S. firm's ability and other company-related variables, the U.S. firm may decide that its interests are served more productively by approaching a specific market via joint ventures, licensing agreements, or possibly overseas production. The firm makes such decisions unilaterally or in concert with foreign businesses directly. At no time do we encourage U.S. firms to forego the establishment or expansion of production facilities in the U.S. in favor of overseas manufacturing. The private sec-

tor knows its internal limitations and abilities best and the firm ultimately decides on the most viable method for approaching a specific market.

The US&FCS' Office of Multilateral Development Bank Operations (MDBO) works to increase U.S. exports of goods and services to projects financed by the World Bank and the other four multilateral development banks (MDB's)—over \$40 billion in projects sponsored by developing national governments annually.

The MDB's also are providing funding to an increasing number of privately-sponsored investment projects in developing nations. This financing is made on market terms to projects that fit certain financial, social and economic criteria established by the MDB's. The MDB's will usually fund only about one-third of the total cost of a private project. U.S. companies are eligible to tap into this source of financing for their investment projects in developing nations if they so desire.

For example, the US&FCS European Bank for Reconstruction and Development (EBRD) post in London helped Honeywell Inc. (Minneapolis, MN) secure \$25 million in equity financing from EBRD to support Honeywell's plan to create a series of energy service companies (ESCO's) in several Central and East European countries. The ESCO's, either Honeywell-owned or joint ventures with local partners, will install meters and other energy saving equipment in industrial, commercial and government facilities around the region. A substantial amount of this equipment will be sourced from the United States.

US&FCS policy remains committed to encouraging U.S. exports of goods and services. Under no circumstance is it ever our policy to encourage or suggest that U.S. firms establish production facilities overseas at the expense of U.S. firms' domestic employment.

*Question.* To this end, I understand that the US&FCS is now conducting "reverse trade missions." With these missions, US&FCS brings foreign businesses to the U.S. which are seeking markets for products. Please provide a list by country since January 1, 1995, of these "reverse trade missions" missions and the cost and purpose of each mission.

*Answer.* On a very limited basis, US&FCS has supported "reverse trade missions" whose primary objective is to introduce qualified foreign buyers to U.S. suppliers of goods and services. Hopefully, this can be a cost-effective means for U.S. companies to meet with foreign buyers and introduce their American-made products leading to sales or agent/distributor agreements overseas.

The Trade and Development Agency (TDA) has a program specifically designed to organize or sponsor "reverse trade missions" to the United States. The US&FCS MDBO and our posts at the Inter-American Development Bank (IDB), World Bank and Asian Development Bank (ADB) have participated in several TDA-organized missions. In each case, the reverse missions consisted of government officials from Latin American or Asian countries who were interested in assessing U.S. technology for possible purchase. Many of these officials had authority to procure goods and services for projects financed by the IDB, World Bank and ADB. In these cases, the reverse missions provided a very cost-effective way to familiarize foreign government decision makers with U.S. technology prior to the international procurement process taking place.

The US&FCS supported the following "reverse trade missions" since January 1, 1995:

- November 1995, "Bridges to Progress" reverse mission from Morocco. The mission of 17 high-level Moroccan business people led by Ambassador Marc Ginsberg visited the U.S. to find suppliers and possible business partners. All costs associated with the mission were covered by fees paid by the Moroccan participants.
- February 1997, "Bridges to Progress II" reverse mission from Morocco. The mission of 17 high-level Moroccan business people led by Ambassador Marc Ginsberg visited the U.S. to find suppliers and possible business partners. All costs associated with the mission were covered by fees paid by the Moroccan participants.
- April 1997, the Southern African Development Community (SADC) reverse mission from Southern Africa. This mission of 12 ministers and 12 private sector representatives from the SADC region came to Washington to discuss with USG officials implementation of the organization's free trade agreement, known as the SADC Trade Protocol. The travel costs for the SADC delegation members were covered by AID. The cost to the US&FCS was \$5,000 to cover travel costs for the Commercial Minister Counselor from Johannesburg who participated in the mission.

*Question.* I have always supported the integration of the domestic and overseas personnel systems of the US&FCS. I'm pleased that this is a goal for the US&FCS too. I am interested in how successful these efforts have been. Please provide the

total number of civil servants that have been integrated into the foreign service by grades. What percentage of civil servants that sought admission to the foreign service succeeded?

Answer. The US&FCS has been pursuing its integration policy very forcefully over recent years. When we aggregate the numbers, we find a very high percentage of civil servants have converted into the foreign commercial service after successfully passing a foreign service assessment. As a total, we currently have on board 203 foreign commercial service career officers (FCSC) of which 98 passed a foreign service assessment and then converted from the civil service of the Commerce Department. This means that 48 percent of today's total FCSC officer corps came from the Commerce Department civil service after having passed a foreign service assessment. We have an additional 19 Commerce Department civil servants currently posted to overseas positions on "limited non-career" appointments; many of these people also have successfully passed our latest March 1997 assessment for the foreign service and should be offered the option of converting shortly. Here are the current figures broken down according to grade:

Grade	Total Career Officers in 1997	Total from USDOC Civil Service
Career Minister .....	2	.....
Minister Counselor .....	13	2
Officer Counselor .....	18	5
FS-01 .....	48	27
FS-02 .....	52	29
FS-03 .....	54	29
FS-04 .....	16	6
Totals .....	203	98

Admission to the foreign service is based on successful completion of an intensive examination which is referred to as an "assessment." This assessment includes 5-6 hours of examination exercises. We have conducted three assessments limited to internal civil service staff with the following results: in August 1995, assessment for commercial service staff at GS 14/15—pass rate of 55 percent (11 of 20 passed); in November 1995, assessment for commercial service GS 12/13 employees—pass rate of 50 percent (33 of 66 passed); and in March 1997, assessment for ITA employees—46 percent (47 of 103 passed).

Many of the current commercial service officers did not pass the assessment on their first attempt.

*Question.* What is the current on-board strength of the US&FCS (overseas and domestic, U.S. national and foreign national employees) as of February 28, 1997, versus September 30, 1996? What is the status of the 106 additional FTE that were directed in the Senate appropriations report?

Answer. The figures for the two periods follow:

	As of February 28, 1997			As of September 30, 1996		
	Overseas	Head-quarters	Domestic field	Overseas	Head-quarters	Domestic field
Foreign Civil Service officers .....	191	12	19	187	14	15
Foreign Service secretaries .....	7	2	.....	7	2	.....
Foreign Service nationals .....	496	.....	.....	515	.....	.....
Civil service employees .....	.....	162	283	.....	164	275
Subtotal .....	694	176	302	709	180	290
Grand total .....	1,172			1,179		

US&FCS's operational FTE ceiling has not been adjusted to reflect an increase of 106 FTE. This is prudent in light of ITA's and US&FCS's fiscal year 1998 FTE request. Otherwise, the US&FCS would be in the position of hiring staff in fiscal year 1997 only to release them in fiscal year 1998 in order to comply with its fiscal year 1998 ceiling.

*Question.* The State Department regularly sends the Committee information on its personnel levels, but US&FCS does not. Please provide the number of US&FCS officers by grade (FS-04 through Career Minister Counselor) as of September 30, 1992, September 30, 1996, and current on-board strength. If there has been an increase in average grade levels over this period of time, please explain why.

*Answer.* The US&FCS as an organization is a relatively small one as compared to State—about 250 versus 8,100 foreign service personnel. (This figure for State does not include the agencies of United States Information Agency (USIA), AID and Arms Control and Disarmament Agency; if it did 10,380 would be the approximate total.) We in the Commercial Service are more like the Foreign Agricultural Service (FAS) with its 190 foreign service personnel. We would be more than happy to adopt any standing procedures with your Committee that would be appropriate for a small officer corps like ours.

Here are the three time frames requested and the breakdown of the various grades:

	September 30, 1992		September 30, 1996		Current	
	Career	Noncareer	Career	Noncareer	Career	Noncareer
Career Minister .....	1	.....	1	.....	2	.....
Minister Counselor .....	8	1	12	1	13	1
Officer Counselor .....	15	.....	16	.....	18	.....
FS-01 .....	45	4	48	3	48	4
FS-02 .....	52	7	49	8	52	8
FS-03 .....	25	6	53	13	54	14
FS-04 .....	24	13	20	2	16	3
Totals .....	170	31	199	27	203	30

The Commercial Service began its career in 1981 and so did many of its officers. Since it is a foreign service organization with its “up or out” promotion policies, people have gradually been promoted through the ranks, while others have reached their “time-in-class” and have retired or left the service.

In analyzing the career and non-career personnel, there is a natural rise in the level of officers as the service matures from the age of 11 to 16 years. There is also an increase in officers reflecting the additional FTE that Congress has given us over the years. We have placed many of these additional officers in the Big Emerging Markets (BEM). Moreover, we are still using a number of non-career limited appointments in the BEM's and other markets such as China, the Middle East and the Newly Independent States (NIS) because we have lost many specialized officers to the private sector. As with other foreign affairs agencies, we have difficulty in replacing their skills quickly enough from our career cadre.

In comparison to the other four foreign affairs agencies (Department of State, USIA, AID, FAS), the Commercial Service is in line with their grade/rank dispersion. Moreover, 47 percent of all commercial service posts overseas are so called “1-officer posts;” so a commercial service officer must have a significant degree of experience and skill to carry out commercial responsibilities as the “one and only.” The one area, however, where we do not compare well with most other foreign affairs agencies is that our senior commercial officers have yet to reach the rank of ambassador. After being a foreign affairs agency for more than 16 years, we feel our top level officers are sufficiently qualified to have at least one of them become an ambassador at a commercially significant post.

*Question.* In fiscal year 1996 and fiscal year 1997, Congress reduced appropriations for the International Economic Policy (IEP) division of the ITA significantly. It appears that in spite of dire predictions by the Commerce Department, these reductions were accomplished without significant employment or program impacts. How did ITA manage to sustain IEP personnel levels in spite of reductions in funding? What costs have been absorbed by other divisions, such as the Trade Development division, to provide relief for IEP? Were such actions not submitted to the Committees on Appropriations in accordance with Section 605 of the Commerce Appropriations Act?

*Answer.* The Market Access and Compliance (MAC), formerly IEP, subactivity has had a significant decrease in FTE usage. An apparent increase of 16 positions, from 187 in fiscal year 1996 to 203 in fiscal year 1997, is not an actual increase. It is due solely to the fact that beginning in fiscal year 1997, 28 FTE devoted to AID-funded programs administered by MAC (BISNIS—the Business Information Service

for the NIS, CEEBIC—the Central and Eastern Europe Business Information Center, and SABIT—the Special American Business Intern Training program) began to be reflected in the MAC's direct (as opposed to reimbursable) FTE allocation.

Thus, this change in accounting for FTE makes it appear that MAC had an increase in personnel, when in fact it did not. Net of the AID-funded activities, MAC's authorized FTE has actually dropped by 12 (from 187 to 175). Within that total, by the end of fiscal year 1997, MAC will have brought its FTE for the TCC to the 25 directed by the Congress which is a gain of 20 from the 5 on board in fiscal year 1996. MAC's regional operations have had to absorb this transfer fully in addition to the overall reduction in staffing. In fact, MAC's regional operations will have dropped by 32 FTE, or 18 percent, by the end of fiscal year 1997.

This reduction cannot be viewed in isolation. MAC's FTE has been declining each year since fiscal year 1994. In fiscal year 1996, the cut alone was 14 FTE and MAC's regional staff has been reduced in size by 46 FTE in two years. The effect has severely reduced MAC's ability to address regional market access barriers. As examples, MAC had a staff of eight officers working on China in fiscal year 1995 which has been reduced to four, and MAC's Japan staff has been reduced from thirteen to nine.

In response to the Congressionally imposed reductions, MAC is shifting its mix of work activities by sharply reducing business counseling in order to concentrate its remaining resources on identifying market access barriers and agreements compliance violations, and developing the strategies for overcoming the barriers and remedying compliance problems. For example, MAC has closed its Japan Export Information Center, which was the only U.S.-based source of Japan access information, in order to focus its remaining staff of Japan experts on Japanese market access barriers, Japanese compliance with existing agreements, and providing expertise for ongoing negotiations.

In January 1997, given the decreased fiscal year 1997 appropriation and a set-aside for the TCC, ITA requested a reprogramming of funds for MAC. The request was submitted to Congress for \$500,000 from funds deobligated from ITA's prior year accounts for the purpose of paying external North American Free Trade Agreement review panelists. ITA has acted in accordance with reprogramming guidance in Section 605 of the Commerce Appropriations Act.

In April, 1997, ITA moved 9 positions from MAC to Trade Development (TD) in order to consolidate trade information dissemination in the TD unit and further relieve MAC to concentrate on other areas.

In summary, the declining fiscal years 1996 and 1997 funds translated to a significant decrease of foreign market expertise available in the organization resulting in a major adjustment and reduction in services provided both to the U.S. business community and other USG agencies. Our support of USTR has suffered in a number of ways. The decreased funds have impaired our ability to support negotiations and enforcement of critical sector trade agreements such as the U.S.-Japan Medical Technology Agreement which covers a market worth \$2.6 billion to U.S. medical companies. MAC staff has also stopped travel in support of the General Agreement of Trade and Tariff and the World Trade Organization accessions involving a number of major U.S. trading partners such as the People's Republic of China. We are having difficulty providing country-specific analyses of regulatory structures and importing regimes of 32 Latin American countries for the preliminary Free Trade Agreement of the Americas market access negotiations. There are other areas of decreased MAC support of USTR, but they are too extensive to mention in this context.

*Question.* You state that you are considering reorganizing ITA. Why? What are your goals?

*Answer.* ITA is considering reorganization to assess the possibility of creating a more effective and efficient organization which better serves its clients. We are examining a number of scenarios to determine which best leads to the improved organization we are seeking.

One of the primary factors driving our examination of different options is our desire to reduce the number of Schedule C appointees and the number of deputy assistant secretaries in ITA. This is part of a Departmental-wide plan which will be implemented during the next two years. Linking these personnel changes with development of our new strategic plan may require a reorganization.

Ultimately, whatever course we take will lead us down the track to an organizational structure which puts client service first so that the true benefits of increased exporting creates more jobs for U.S. workers, more profits for U.S. firms, and a stronger economy in general which can more completely reach fruition.

*Question.* I've always been pretty impressed with ITA. They do a super job. What do you perceive is wrong or can be improved?

Answer. We feel the program mix delivered by ITA to its business clients is currently very strong. As we mentioned above, however, we are examining the possibility of performing a reorganization if it can be shown to produce a more efficient and effective means of delivering the programs.

*Question.* You have changed the guidelines for overseas trade missions. I believe these missions are very important because they help us compete with the Germans, Japanese and French. What has industry's reaction been to your policy changes?

Answer. On March 3, 1997, the new policy guidelines for all trade missions run by the Department were announced. These guidelines were developed by both political and career employees after a thorough 30-day review of all trade mission approval, promotion, recruitment and selection activities.

The guidelines were designed to ensure better and broader notification and promotion of our trade missions through the Department's trade promotion partners, including trade and industry associations and targeted media outlets, as well as more defined recruitment and selection processes. The business and industrial community have benefitted from these new guidelines by having greater access to information about our trade missions through the Internet and Federal Register. Most importantly, the guidelines have ensured that no political influence is incorporated into the selection process.

The business and industrial community's reaction to these guidelines has been positive, witnessed by the many successes following my most recent mission to Latin America, as well as other Departmental trade missions held since March 3rd. While the companies that participate on these missions provide more information than in the past when applying for a mission, including certifying compliance with the Foreign Corrupt Practices Act for the mission and providing details on their business objectives to ensure that they meet the goals of the mission, the results of the missions are more assured.

The guidelines have helped to sharpen the focus of our trade missions on the core business of the Department in this area which is to promote the best that American business has to offer to the global economy.

#### MINORITY BUSINESS DEVELOPMENT AGENCY [MBDA] EFFECTIVENESS

*Question.* You are reorganizing the International Trade Administration (ITA), a program that has been very effective. But in the case of MBDA, there is an agency with an important mission that has had problems and has been less than effective.

Have you given any thought on how to reinvigorate this Agency?

Answer. MBDA has already undertaken concrete steps to reinvigorate its program. Over the past several years, MBDA had come to place excessive reliance on its Minority Business Development Center (MBDC) network as the vehicle for delivering its services to minority entrepreneurs. While the MBDC network addresses a critical aspect of any comprehensive strategy for minority business development, namely, providing minority entrepreneurs with basic management and technical assistance, too much of its resources had come to be concentrated in this one area.

#### *The MBDA Mission*

Executive Order 11625 establishes MBDA, specifically its predecessor the Office of Minority Business Enterprise, as the overall coordinator of Federal Government efforts to promote the growth and expansion of the Nation's minority-owned businesses. While MBDA has never operated as a large bureaucracy in terms of either staff or budget resources, its strategic, research and policy-oriented focus has always been the key to MBDA's effectiveness. Early in its history, MBDA assisted in the development of a national infrastructure to support minority businesses by providing seed funding for such trade organizations as the National Minority Supplier Development Council (NMSDC) and the Hispanic Chamber of Commerce. MBDA also provided technical assistance and guidance to state and local governments throughout the country to help them establish their own minority business enterprise programs. Many of the programs developed through these efforts have gone on to support successfully minority business growth long after MBDA's assistance was withdrawn. It is this sort of flexible, strategic and highly-leveraged assistance that is the cornerstone of MBDA's approach to minority business development, and that distinguishes MBDA's programs from the more structured minority programs of other agencies, including the Small Business Administration (SBA).

In 1982, MBDA established the Minority Business Development Center (MBDC) program. The MBDC's were developed as a strategy for providing direct client assistance to individual minority-owned companies in order to improve their overall competitiveness. Located throughout the country in metropolitan areas having substantial minority populations, the MBDC's offered minority entrepreneurs qualified professional business consulting through a staff of trained counselors. Under the

traditional MBDC guidelines, MBDC's are operated by private organizations who compete for grants to operate under a competitive solicitation process.

*Factors Which Have Eroded the Effectiveness of the MBDC Program*

While the MBDC Program was an effective program when it was first established over a decade ago, a number of factors have caused the effectiveness of the program to decrease over time. These factors include:

*Cost.*—The MBDC program has always been overhead intensive and costly to operate. Out of the funding which MBDA provided, operators had to lease and furnish commercial office space, hire clerical staff, purchase computer equipment required under the program guidelines, and attempt to attract consulting staff with the necessary credentials to assist minority entrepreneurs with their business problems. Because of stagnant (and now substantially decreased) appropriations, MBDA has been unable to increase the funding levels for the centers in over a decade, despite the fact that the operators' costs have been steadily increasing. At the same time, however, a full eighty-five percent of MBDA's program spending had come to be focused on maintaining the MBDC network, impeding the MBDA's ability to deliver other types of program services.

*Non-Local Operators.*—In addition to the pressures of rising costs, the success of the MBDC program came to be impeded by the transience of the MBDC operators themselves. The MBDC program guidelines previously established no preference for locally-based applicant organizations in the competitive solicitation process. This had the effect over time of producing a number of centers which were operated by out-of-town firms who, because of the fact that awards are recomputed every three years, had no real incentive to build the centers as long term resources in their local communities.

*Limited Reach.*—Funded to its fullest extent, the MBDC network consisted of approximately 100 business assistance centers operating in markets throughout the country. Recent reports have indicated that these centers served less than one percent of the nation's total minority business population.

*Failure to Utilize Available State and Local Resources.*—Since the establishment of the MBDC program more than a decade ago, a number of organizations and programs have developed at the state and local level with resources to assist minority-owned businesses. These community-based organizations include minority and non-minority chambers of commerce, economic development groups, state and local MBE programs, a variety of non-profit organizations, and others. The traditional MBDC guidelines created no vehicle for establishing partnerships with community-based organizations; thereby, leveraging MBDC funding with locally-generated funding in order to enhance the overall value of the MBDC projects that did not exist.

*MBDA's Reinvention Effort*

MBDA has adopted a reinvention plan which essentially focuses on (1) updating and improving the effectiveness of the MBDC program, and (2) diversifying MBDA programs and services beyond the MBDC program in order to return to its more strategic, research and policy-oriented focus. In order to achieve these goals, MBDA has adopted a revised menu of program services which includes the following four items: Community-based MBDC's; expansion of the Minority Business Opportunity Committee (MBOC) Program; Internet-based service delivery; and sector initiatives.

The program services are described as follows:

*Community-Based MBDC's*

In order to address the above-cited concerns regarding effectiveness of the MBDC's and improve the overall performance of the MBDC program, MBDA has adopted the following modifications to the traditional MBDC guidelines:

*Ten-Point Bonus For Locally-Based Applicants In The Selection Process.*—This ten-point bonus will have the practical effect of preferring qualified locally-based applicant organizations over similarly-qualified non-local applicants. MBDA believes that such an approach will further the goals of the MBDC program because familiarity with the local market, including knowing where opportunities for minority entrepreneurs may exist at any given time, and having established relationships with local business leaders who influence buying and lending decisions, is a critical component of the MBDC work requirements. While the ten-point bonus establishes a preference for locally-based applicants, the preference is not so great as to enable unqualified or marginally qualified local applicants to prevail over qualified non-local firms.

*Establishment Of Forty Percent Cost-Share Requirement.*—MBDA now requires MBDC operators to produce 40 percent of the annual cost of MBDC projects from non-Federal sources as opposed to 15 percent in the past. These additional resources will help to expand the scope of the projects, and alleviate the budget constraints

which have been placed on the MBDC's as a result of stagnant MBDA funding levels. Furthermore, the ability to meet the 40 percent cost-share requirement will itself serve as a screening method for selecting the best operators, since those organizations which have been providing the best services to the community will be the ones most likely to have local-funding support which can be leveraged with the MBDA funding.

With these two program modifications, the MBDC's will become more cost-effective and more effectively integrated into their local communities. Furthermore, by diversifying the funding bases of the MBDC's and using locally-based service providers, MBDA increases the likelihood that the projects will develop as long term resources which could potentially continue to serve their communities even in the absence of MBDA funding.

#### *Expansion of the MBOC Program*

The MBOC program was established by MBDA as a vehicle for identifying available market opportunities for minority businesses within diverse economic regions. Under the MBOC program, the MBDA establishes a committee of key business and industry leaders representing a cross-section of the industries that are vibrant within a particular regional economy. MBDA provides funding to establish an executive director and one or more support staff positions. The committee then meets on a regular basis, no less than monthly, to share information concerning the location of contract, procurement and other market opportunities. This information is compiled and disseminated to the minority business community through the committee staff.

Because the membership of the MBOC consists of a diverse cross-section of the business community, i.e. banks, utility companies, private corporations, port authorities, transit authorities, the procurement offices of Federal, state and local government agencies, etc., the MBOC's play an important role in helping to coordinate the often disjointed efforts of separate organizations to promote minority business utilization within a single market. At the same time, the MBOC's provide a service that is more cost-effective and less overhead-intensive than the MBDC program and one that addresses a critical need within the minority business community, namely, access to market leads. Many of our minority business clients have indicated that they have outgrown the need for basic management and technical assistance, but have a continuing need for information concerning where they can most effectively market their products or services at any given time. MBDA currently has nine MBOC's operating in various markets around the country. In view of the success of this program, MBDA intends to increase the number of these projects.

#### *Internet-Based Service Delivery*

In part because of decreased budget resources, MBDA is currently developing the capability to provide business assistance to minority entrepreneurs nationwide through telecommunications technology including the Internet. This system will enable minority entrepreneurs to access bid opportunities, register for inclusion in MBDA's database of minority firms (which is used as a referral source for contract opportunities), and receive interactive training and technical assistance on-line.

#### *Sector Initiatives*

Part of MBDA's mission which is included in the Executive Orders is to help minority entrepreneurs access opportunities in specialized sectors of the economy offering the unique potential for high-growth and profitability. In addition, MBDA has traditionally sought to identify strategic initiatives through the deployment of its program resources which leverage maximum results for the minority business community. Consequently, a core component of MBDA's reinvention strategy is a renewed emphasis on sector initiatives in such areas as capital formation, franchising, corporate supplier development, international trade, and others.

MBDA is fully committed to improving its performance and has a solid program in place for achieving this goal. We share your belief in the importance of MBDA's mission and would welcome an opportunity to provide you with periodic updates as this reinvention effort moves forward.

#### MBDA/SBA COLLABORATION

*Question.* Last year we fenced money in MBDA's budget for programs to be run in conjunction with the SBA. How is this effort coming along? Could you give us a status report and some concrete accomplishments?

*Answer.* MBDA has already adopted a number of successful joint projects with SBA under the two agencies' recently-developed Business Resource Center (BRC) network. Developed through a partnership consisting of MBDA, SBA, NationsBank, Bell Atlantic, Bell South and others. The BRC's are state-of-the-art facilities offering

entrepreneurial training through SBA's SCORE counselors, management and technical assistance through MBDA's MBDC program, computer equipment, business software, printed resource material and teleconferencing capability for workshops and seminars. These one-stop facilities combine the resources of the various partners in order to create a single focal point within a given market for small and minority business development activities. BRC's are presently located in Nashville, Baltimore, Charlotte, Charleston, Atlanta and Miami, with additional centers now in the planning stages. This joint project has proven to be a very effective vehicle for service delivery.

The two agencies also agreed to establish a series of Executive Training Workshops for the Chief Executive Officers of 8(a) certified companies, to be held in 13 cities throughout the country. These workshops would involve a curriculum that combined the expertise of both MBDA and SBA, in particular its Minority Enterprise Development (MED) division, by having SBA conduct sessions on marketing to the Federal government, Federal contracting procedures and other issues, while MBDA would provide training on developing the 8(a) companies' portfolio of non-8(a) business. While MBDA remains committed to this concept, recent leadership changes in the MED Division at SBA and other issues have delayed this project from moving forward.

MBDA fully supports the notion that it should strive to achieve administrative and cost efficiencies through joint projects with the SBA, wherever such projects have merit in supporting its respective program strategies. However, MBDA does not believe that there is substantial duplication of services or overlap between its programs and those of SBA.

While to some degree SBA, like MBDA, administers programs designed to promote the growth of minority-owned business, the nature of those programs and the manner in which the two agencies operate is drastically different. SBA administers both the 8(a) contracting program, (a sheltered-market contracting program that provides minority companies with access to Federal procurement opportunities), and the Minority Prequalification Loan Program, an extension of SBA's 7(a) loan guaranty program designed to increase the incentive for financial institutions to make loans to minority business borrowers. Both of these programs constitute important components of the Federal government's minority business assistance efforts. However, both are management-intensive programs requiring a substantial commitment of staff and budget resources. These are self-contained programs within SBA that have permanent statutory authority, and SBA is able to administer these programs in large part because of the resources which it has available as the lead agency for addressing the issues of the Nation's small businesses as a whole.

As stated in response to the previous question, MBDA's approach to minority business assistance is substantially different from that of SBA. While SBA manages two of the Federal Government's largest minority business programs on an ongoing basis, MBDA's practice, in accordance with its Executive Order, is to use a flexible research and policy-oriented approach to design strategic initiatives to impact minority business growth. For this reason, MBDA (at that time the Office of Minority Business Enterprise (OMBE)) was placed within the Department of Commerce to facilitate the necessary linkages with sister Federal agencies, and give the Agency cabinet-level stature to maximize its ability to coordinate the activities of Federal, state, local and private sector organizations.

#### NOAA—SATELLITES

*Question.* Your NOAA satellite program is probably the most expensive single item in your Commerce Department budget. For fiscal year 1998 you are requesting \$321 million and your outyear estimates include over \$3 billion to procure Geostationary and Polar satellites.

I am concerned that while you and I pay for this program—it is run and controlled by NASA. I cautioned Dr. Baker about this at last year's hearing.

When I look at what has occurred in the past year with the NOAA Geostationary Satellite program, I would have to say that I am very disappointed. NOAA has proposed one procurement plan that has been rejected by NASA. In each case NOAA has changed its plans and just does what NASA wants.

So Mr. Secretary, you've got the budget and responsibility and they've got the control. If NASA is going to run your Commerce satellite programs, then why don't we just shift the cost for NOAA satellite programs to NASA's budget and the VA-HUD Appropriations Subcommittee?

*Answer.* The satellite programs are an essential element of NOAA's operational environmental mission, whereas NASA's satellite programs are science, research

and development oriented. As the satellite data user, NOAA believes that the overall program management must reside with NOAA.

NOAA manages the overall GOES program and controls the flow of funds to NASA. NOAA develops the GOES program requirements based on its expertise and understanding of operational forecasting needs and impacts. NASA then uses its research and development expertise to develop specifications, and to procure, produce, launch and deliver GOES satellite systems that satisfy NOAA's requirements. It is under NASA's procurement authority that these satellites are being acquired.

*Question.* I fear we are recreating the situation we had in the GOES geostationary satellite program just a few years ago. That's why this Committee has consistently said we want reliability and coverage, no more R&D with GOES Satellites.

*Answer.* Today's situation is much different from "a few years ago." Past development difficulties with instruments in the late 1980's have been successfully resolved and the risks are now well understood and controlled. The instruments that are currently operational on GOES 8 and 9 continue to provide data vital to the protection of life and property. To keep risks to a minimum, and to increase reliability, more of the same instruments are being procured. These instruments do not require R&D.

To avoid future repetition of the problems from the past, NOAA will pursue a more conservative approach to developing the next series of geostationary satellites. This path will maintain an awareness of current technological advances, identify risks early, and develop and test means to mitigate risks well in advance of formal commitments to implement actual instruments designs.

*Question.* It was just five years ago that I held a special hearing and Secretary Robert Mosbacher said "I don't know anything, it's not my program, ask NASA." It's on your watch Secretary Daley, have you looked into this situation? Have you asked NOAA satellite managers what is the right course of action versus what NASA told them they are willing to do?

*Answer.* Yes, I have looked into the situation. Following those hearings, NOAA created the Systems Acquisition Office to provide increased management and financial oversight to ensure that NASA implements the program within NOAA's guidelines and constraints. NOAA satellite managers work closely with NASA on technical issues and, in many cases, conduct their own analyses. The Department is pursuing an acquisition strategy for GOES that best meets the needs of the National Weather Service while minimizing risk and program costs.

#### PERFORMANCE-BASED ORGANIZATION

*Question.* The Administration is proposing that the Patent and Trademark Office (PTO) be made a "Performance-Based Organization". What does that really mean?

*Answer.* A performance-based organization (PBO) is a discrete unit of a department that commits to clear management objectives, measurable goals, customer service standards, and accountability for specific targets for improved performance. The unit remains within a department under the policy guidance and direction of the Secretary and is still subject to Government-wide regulations, rules, policies, and procedures, unless specific waivers are granted. A PBO focuses on programmatic operations, not policy-making functions.

A PBO will have a Chief Operating Officer (COO) and greater managerial flexibilities in personnel, procurement and other specified areas which will enable it to improve organizational performance. The COO will be selected for managerial experience, for a fixed term, and will sign an annual performance agreement with the Secretary and be accountable for meeting the organization's performance improvement goals. In addition to managerial experience, the COO would be selected from individuals who have professional experience in patent or trademark law. The performance goals would be used as a basis for the Secretary of Commerce to evaluate the performance of the COO to determine whether to award a bonus and, if so, the amount of the bonus.

In the case of the PTO, the PBO, to be called the United States Patent and Trademark Organization (USPTO) would be an agency of the Department of Commerce and would focus on the examination of patent and trademark applications and the dissemination of patent and trademark information. The USPTO would have greater flexibilities in connection with personnel management and procurement, in accordance with special statutory language. An Under Secretary of Commerce for Intellectual Property would also be established under the Administration's bill. The Under Secretary would be responsible for, among other things, granting patents, registering trademarks, giving policy direction to the COO and advising the President and agencies of the U.S. Government, through the Secretary of Commerce, on patent and trademark policy and related matters.

*Question.* So we are going to let compensation for PTO management go up, what else do we expect to get out of it?

Answer. Maximum levels would be established in the legislation for salaries for the COO and the other officers of the USPTO, consistent with those paid for comparable positions in the Executive Branch. The purpose of the legislation is to improve the efficiency and cost effectiveness of the portion of the PTO that examines patent and trademark applications and disseminates information about patents and trademarks so that the USPTO will be able to operate more like a business. More flexible procedures in connection with personnel management and procurement would be available to the COO to meet the goals that are set by the COO and the Secretary of Commerce in an annual performance agreement.

*Question.* Will you, the Secretary of Commerce, still have a management and oversight role for PTO if it becomes a "Performance Based Organization?"

Answer. The COO and the Secretary of Commerce would enter into an annual performance agreement establishing for the USPTO clear management objectives, measurable goals, customer service standards, and specific targets for improved performance. These would be used as the basis for the Secretary of Commerce to evaluate the performance of the COO to determine whether to award a bonus and, if so, the amount of the bonus. The Secretary also could dismiss the COO for misconduct or failure to meet the performance standards established in the annual performance agreement. In addition, the USPTO would be under the policy direction of the Under Secretary for Intellectual Property on patent and trademark matters and would still be subject to governmentwide regulations, rules, policies, and procedures, unless specific waivers were granted.

*Question.* The Judiciary Committees created this Patent surcharge for deficit reduction purposes back in 1990, and now the House Judiciary Committee is proposing to give these fees back to the PTO. What is the Administration's position on this surcharge issue?

Answer. The Administration opposes the surcharge fee provisions incorporated in H.R. 400 and continues to support the concept of using patent surcharge fees for deficit reduction. However, we are willing to work with the Committee on this issue in the context of establishing PTO as a PBO.

#### ADVANCED TECHNOLOGY PROGRAM

*Question.* The ATP is sometimes criticized for contracting with large firms as well as small ones to help the country develop next-generation technologies. Yet other federal technology programs contract with large companies when they have the best proposals for meeting a public mission. NASA aeronautics, for example, contracts with Boeing, General Electric, United Technologies, and others. DARPA, the Energy Department, and USDA also contract with large firms. They're often the ones with the technological expertise. Do you think it would be appropriate to restrict the ATP to only small companies when other Federal programs continue to fund the best proposals regardless of the size?

Answer. The ATP has always been "size-blind" when making awards. ATP competitions are rigorous but fair, and based entirely on technical and business merit. Small companies compete just as effectively as large companies. Since its inception, 47 percent of all awardees (single applicants and joint venture leaders) have been small businesses. Companies of all sizes have good ideas and the technical capabilities, but they may face disincentives for tackling high-risk, enabling technology development. ATP provides a process for independent review, approval, and seed funding that pushes large companies to take risks they would not have normally taken. Often the large company in a partnership is very valuable since it brings its unique capabilities for commercialization to the joint venture. Large companies are certainly as important to the Nation's R&D effort as small companies and for the ATP to make the necessary economic impact it will require the engagement of all companies both large and small.

*Question.* Please tell us more about the consultations you will now undertake regarding the ATP. With whom will you consult, and who will lead these consultations? What do you expect will come of these discussions?

Answer. Secretary Daley has asked the Commerce Department's Technology Administration (which includes the National Institute of Standards and Technology) to review and analyze several features of the Advanced Technology Program to ensure the continued strength and effectiveness of the Program. The topics to be considered include: the ATP budget process; the ratio of new projects to old; whether or not big companies should continue to be allowed to compete for ATP awards outside of research consortia; whether or not the ATP applicants should have first attempted to obtain private funding for their proposed projects; and whether or not those

states without an existing, strong R&D community should be given a better chance to participate in the program.

In gathering information for this study, the Technology Administration will draw on the comments and opinions of the scientific and technical research communities served by the ATP, including industry, universities and non-profit research organizations, and will use the existing studies of the ATP that document the effectiveness of the program under its current policies as background. The Department's goal in undertaking this review is to ensure that the ATP remains well-positioned to foster the high-risk, high-payoff technologies that can bring broad-based benefits to the nation's economy.

#### MANUFACTURING EXTENSION PARTNERSHIP [MEP]

*Question.* A number of the older Manufacturing Extension centers are now reaching the end of their original Federal funding. Yet we know that many small firms have yet to be reached by extension centers, and we know that private consultants continue to ignore this group of firms because they are so small.

What is the Administration's position regarding the so-called sunset, and how will you proceed on this issue?

*Answer.* Listed below are the centers affected by sunset in fiscal year 1998 and the dates on which they reach sunset: Great Lakes Manufacturing Technology Center (OH), January 1, 1998; South Carolina Manufacturing Technology Center, January 1, 1998; Mid-America Manufacturing Technology Center (KS), April 1, 1998; Michigan Manufacturing Technology Center, April 1, 1998; Minnesota Manufacturing Technology Center, August 1, 1998; and California Manufacturing Technology Center, August 1, 1998.

Congress previously granted a one-time, three-year waiver for the centers in Ohio and South Carolina that reached sunset in fiscal year 1995 and a one-time, one-year waiver for the centers in Kansas and Michigan that reach sunset in fiscal year 1997; in each instance the waiver was granted in the annual appropriations legislation.

Without a modification of the sunset provision, centers will be forced either to shift their focus to larger companies that can provide sufficient business value to cover outreach costs or to close. Either way, small firms, especially those most in need, will be left without access to valuable technical assistance.

The NIST MEP was created by the passage of the Omnibus Trade and Competitiveness Act of 1988. At the core of this program are a network of not-for-profit MEP centers created with a 50 percent match in the first three years between Federal funds and state, local, and private sector funding. The Federal share decreases to 40 percent in year four and to 33 percent in the last two years of the six-year statutory limit on Federal funding defined in the sunset provision of the authorizing legislation.

The Department of Commerce is considering a proposal to seek a change in the authorizing legislation that will enable MEP awardees to reapply for Federal funding beyond the six-year limit imposed by current authorization law. Factors under consideration include merit-based criteria for reapplication and selection.

Congress included language in the conference report covering fiscal year 1997 appropriations which reflected their belief that the sunset matter is most appropriately addressed through the authorization process. NIST concurs that this is a more effective solution than the piecemeal approach adopted previously for the MEP centers in Kansas, Michigan, Ohio, and South Carolina through the annual appropriations process.

Modification of the six-year limit on Federal funding does not mean that NIST intends to fund MEP centers in perpetuity. Centers would have to reapply and undergo a rigorous application process. NIST has the authority, and has exercised that authority, to terminate Federal funding to centers that are not performing up to MEP's published criteria of excellence.

Pending modification of the sunset provision in the authorizing legislation, the Administration's fiscal year 1998 budget submission to Congress proposes language to be included in the fiscal year 1998 appropriations legislation that would grant a one-time waiver for those MEP awardees facing sunset in fiscal year 1998 as follows: waive the six year funding limitation and authorize additional financial assistance; authorize funding for a period not to exceed two more years; funding rate not to exceed one-third of center's total annual costs; subject to positive evaluation of the center; subject to reapplication by the center and a successful review of the reapplication; and subject to Secretary of Commerce finding that continued Federal funding to that center is in the best interest of the program.

## QUESTIONS SUBMITTED BY SENATOR PATRICK J. LEAHY

## CIRCULATION AND SUBSCRIBER FIGURES

*Question.* Secretary Daley, several issues have been raised regarding the NTIS' World News Connection (WNC). I would appreciate your answers to the following questions:

The WNC replaced a paper publication known as the "FBIS Daily Reports." What were the monthly circulation numbers for the final year of "FBIS Daily Reports" and the monthly circulation numbers for the WNC since its inception?

In addition, what was the monthly paid subscriber numbers for the "FBIS Daily Report" and what are the monthly paid subscriber numbers for the WNC since its inception?

Answer. The requested figures are as follows:

## FOREIGN BROADCAST INFORMATION SERVICE (FBIS) DAILY REPORTS

Month/year	Paying subscri- ers	Copies cir- culated per month
October 1995 .....	644	35,547
November 1995 .....	651	29,795
December 1995 .....	695	30,961
January 1996 .....	546	30,973
February 1996 .....	453	21,146
March 1996 .....	470	25,749
April 1996 .....	475	28,487
May 1996 .....	469	25,407
June 1996 .....	464	21,060
July 1996 .....	450	22,513
August 1996 .....	230	12,599
September 1996 .....	165	1,540
Total .....		285,777

*World News Connection*

<i>Month/Year</i>	<i>Paying Subscribers<sup>1</sup></i>
November 1995 .....	
December 1995 .....	
January 1996 .....	46
February 1996 .....	67
March 1996 .....	125
April 1996 .....	154
May 1996 .....	184
June 1996 .....	204
July 1996 .....	234
August 1996 .....	346
September 1996 .....	450
October 1996 .....	499
November 1996 .....	547
December 1996 .....	559
January 1997 .....	585
February 1997 .....	614
March 1997 .....	641
April 1997 .....	622

<sup>1</sup> WNC is an electronic product, so we do not have figures for copies circulated.

## WNC BUDGET

*Question.* The WNC operating cost is included in the NTIS budget for fiscal year 1998. What is the projected revenue for WNC in fiscal year 1998 and what is its projected operating costs? In addition, please provide the subcommittee with the projected revenue and cost figures for fiscal year 1996 and fiscal year 1997 and the actual revenue and cost figures for fiscal year 1996.

Answer. For fiscal year 1996, we projected \$600,000 in revenue and \$417,000 in costs. However, the program was inaugurated later in the year than we anticipated. The actual fiscal year 1996 revenue and costs were \$97,922 and \$376,211 respectively. Based on that experience, we projected fiscal year 1997 revenue and costs at \$419,400 and \$675,000 respectively. Our projections are on target. The projected revenue and costs for WNC in fiscal year 1998 are each \$800,000. That is, WNC should break even in fiscal year 1998.

#### WNC MARKETING

*Question.* Does NTIS market the WNC? If so, what are the target subscriber goals that NTIS seeks to achieve in fiscal year 1998?

Answer. NTIS does market the WNC. The target subscriber goals for fiscal year 1998 are 800 individual subscriptions and 55 networked access subscriptions.

#### TRANSLATION COSTS

*Question.* The Department of Commerce has previously indicated that translation costs of articles included in the WNC are not borne by NTIS. Why does NTIS not incorporate this cost into the subscription rate for WNC? What is the estimated cost for this translation?

Answer. NTIS does not incur any translation costs with respect to WNC. Similarly, translation costs were not charged when the product was distributed in paper form. Such costs are borne by the Foreign Broadcast Information Service (FBIS), which is part of the Central Intelligence Agency (CIA), in accordance with its requirement to collect foreign open source literature for federal policy makers. NTIS is provided the data feed from FBIS, which consists of the translated articles, in order to make them accessible to the public. NTIS is unaware of the estimated costs for the translations. This question should be referred to FBIS.

#### SOURCES IN WNC VS. SOURCES IN "FBIS DAILY REPORT"

*Question.* What is the number of sources that were included in the "FBIS Daily Report" and what is the number of sources that are now included in the WNC?

Answer. As NTIS did not produce the "FBIS Daily Reports," it is unaware of the number of sources included in the "FBIS Daily Reports." This question should be referred to FBIS. There are 3,442 sources included in WNC.

#### SUBCOMMITTEE RECESS

Senator GREGG. We certainly appreciate your time. Thank you for your courtesy, and we look forward to working with you.

Secretary DALEY. Thank you, Mr. Chairman.

[Whereupon, at 2:53 p.m., Thursday, March 13, the subcommittee was recessed, to reconvene subject to the call of the Chair.]

**DEPARTMENTS OF COMMERCE, JUSTICE, AND  
STATE, THE JUDICIARY, AND RELATED  
AGENCIES APPROPRIATIONS FOR FISCAL  
YEAR 1998**

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**WEDNESDAY, MARCH 19, 1997**

U.S. SENATE,  
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,  
*Washington, DC.*

The subcommittee met at 2:05 p.m., in room S-146, the Capitol,  
Hon. Judd Gregg (chairman) presiding.

Present: Senators Gregg, Campbell, and Hollings.

**SECURITIES AND EXCHANGE COMMISSION**

**STATEMENT OF HON. ARTHUR LEVITT, CHAIRMAN**

**OPENING REMARKS**

Senator GREGG. Why don't we get started. I want to thank the chairman for joining us today. We would be happy to get your input, unless the ranking member wishes to give an opening statement.

Senator HOLLINGS. No; thank you.

Senator GREGG. OK. We are pretty casual here, and we are interested in your thoughts on what is happening at the Securities and Exchange Commission [SEC] and any other ideas you wish to bring to us.

Mr. LEVITT. All right. I have a brief, two-page statement.

Senator GREGG. However you want to handle it. You can submit it, read it, or just talk.

Mr. LEVITT. I'll skim it.

Senator GREGG. OK.

**SUMMARY STATEMENT**

Mr. LEVITT. Of course, I appreciate the opportunity to testify before you this morning on our fiscal year 1998 budget. The President's request for the SEC includes \$317.4 million in fiscal year 1998, which puts us in a no-growth budget with respect to staffing levels, but would allow for an increase of \$12 million above the Commission's fiscal year 1997 appropriation. Most of that is going toward mandatory increases in pay and related personnel benefits.

The proposed appropriation would hold our staffing at the 1997 level of 2,797 full-time equivalents. I don't have to tell you about

our markets and what's happened with the Dow and the number of investors.

Today, one out of every three households invests in mutual funds. There is more money in mutual funds today than there are in all the bank deposits in America. These broad-based markets, I believe, don't happen without broad investor confidence in the fairness of our markets.

I believe that there is a dollar and cents consequence to markets that are thought of as being rigged or unfair, and I see that in other democratic markets around the world, as compared to our own, which are rigorously and fairly regulated.

The Commission has fulfilled its mission to protect investors and maintain fair and orderly markets. My concept is that competition within our markets should be both fierce and fair. And I think that has characterized our markets for some years.

As a result of bipartisan efforts, last year the Congress passed the National Security Markets Improvement Act that provides a more stable funding structure to allow us to plan better for our future.

#### PREPARED STATEMENT

The 1998 budget request is the first year that our funding is controlled by and fully consistent with that agreement. Thank you.

[The statement follows:]

#### PREPARED STATEMENT OF ARTHUR LEVITT

Chairman Gregg and Members of the Subcommittee: I appreciate this opportunity to testify in support of the fiscal 1998 budget of the Securities and Exchange Commission.

The President's request for the SEC includes \$317.4 million in fiscal year 1998. This request would put the Commission on a "no-growth" budget with respect to staffing levels, but would allow for an increase of \$12 million above the Commission's fiscal year 1997 appropriation. Most of that funding would go to mandatory increases in pay and related personnel benefits. The proposed appropriation would hold SEC staffing at the 1997 level of 2,797 "full-time equivalents" (FTE's), which would stretch agency resources to the maximum in order to fulfill its responsibilities to investors in the rapidly expanding U.S. securities markets.

Our markets are the deepest, fairest, and most liquid in the world. They have experienced considerable growth during the longest and most vigorous bull market in history. In the past year, the Dow Jones Industrial Average has broken 5,000, 6,000, and 7,000 points; the New York Stock Exchange and the Nasdaq Stock Market have both seen stock trading volume hit all-time highs; and assets in mutual funds have reached record levels of \$3.5 trillion—a figure that far exceeds the \$2.6 trillion Americans have on deposit at commercial banks. Compared even with the year just before, 1996 set some extraordinary records: total dollar volume traded on the exchanges and the Nasdaq Stock Market surpassed 1995 volume by 31 percent; registered public offerings broke the trillion-dollar mark, rising 36 percent over 1995 offerings; and initial public offerings rose to \$50 billion, up from \$30 billion in 1995, a 67 percent increase.

The mounting participation of small investors in the securities markets fuels some of this growth. Today, one out of three American households invests in mutual funds. The number of first-time investors grows daily, and will accelerate if Congress acts to privatize a portion of the Social Security program.

Whether up or down, such broad-based markets do not happen without investor confidence in their integrity. I think that, after 64 years of successful regulation, we sometimes take that for granted. For a reality check, consider the extreme opposite end of the spectrum: As I speak, the government of Albania is in crisis, after an open rebellion in the streets. Why? At bottom, it is because investors were not protected from pyramid schemes, one of the simplest and most common financial frauds around. In the U.S., however, thanks to the wisdom of Congress, investors are confident that if a pyramid scheme wipes out someone's savings, the government

will wipe out the pyramid scheme—period. That confidence is the cornerstone of our markets.

The Commission has fulfilled its mission to protect investors and maintain fair and orderly markets, and it has done so with modest staffing and limited resources. I came to the Commission after a lifetime in the private sector, and though I'm mindful of the differences, I've tried to run the Commission like a business. One of the key principles I have applied is that, especially when resources are limited, you improve productivity. Only by improving productivity has the SEC been able to keep pace with what may be the most explosive growth ever seen by our markets for three years in a row, while its staffing has remained flat.

Although we believe staffing can safely remain level for one more year, the challenges we face will continue to grow. These challenges include: the increasing number of Americans who invest their retirement savings in mutual funds; the special concerns raised by the increasing use of derivatives and other complex financial products; facilitating and encouraging greater use of communications technology by companies, brokers, dealers, and investors; completing our mutual fund disclosure initiatives, including fund Profiles and more clearly written and presented mutual fund prospectuses; considering alternatives to the current model of capital formation, including the idea of registering companies as opposed to offerings of securities; redesigning the EDGAR electronic filing system; securing more foreign listings, and signing more cooperative agreements with foreign regulators; conducting an aggressive effort to police Internet fraud; shining a spotlight on the use of soft dollar payments through examinations of investment advisers, institutional investors, and broker-dealers; completing our re-evaluation of the Net Capital Rule; granting qualified immunity to firms for disclosures made on Form U-5; and the reporting of retail price and trade information in the municipal bond market, which should be in place by next January.

Thank you. I ask that my formal testimony be submitted for the record and I would be pleased to answer any questions.

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#### BIOGRAPHICAL SKETCH OF ARTHUR LEVITT

Following his nomination by President Clinton and his confirmation by the Senate, Arthur Levitt, Jr. was sworn in as the 25th Chairman of the Securities and Exchange Commission in July, 1993.

Before joining the Commission, Mr. Levitt owned Roll Call, the Newspaper of Congress. Mr. Levitt served as the Chairman of the New York City Economic Development Corporation from 1989 to 1993 and the Chairman of the American Stock Exchange from 1978 to 1989. Prior to accepting the AMEX Chairmanship, Mr. Levitt worked for 16 years on Wall Street. He graduated Phi Beta Kappa from Williams College in 1952 before serving for two years in the Air Force.

Upon his arrival at the SEC, Chairman Levitt quickly established four priorities: improving investor protections; reforming the municipal debt markets; raising the standards of practice for brokers and strengthening the international pre-eminence of the U.S. capital markets.

During Chairman Levitt's tenure, the SEC has established the Office of Investor Education and Assistance and created the SEC's World Wide Web site, one of the most popular on the Internet, which allows the SEC to make all corporate filings available to the public free of charge.

The SEC has worked to sever ties between political campaign contributions and municipal underwriting business, a practice known as "pay-to-play," as well as improving the disclosure and transparency of the municipal bond market.

Chairman Levitt has also sought to raise the industry's sales practice standards and eliminate the conflicts of interest in how brokers are compensated.

The Commission, together with the industry, has developed the "Profile Prospectus" and other plain English guidelines for investment products in an effort to make disclosure documents easier to understand without compromising the value of the information provided to investors.

#### ELECTRONIC MARKETS

Senator GREGG. Thank you, Mr. Chairman, and we have great respect for what your agency does. As you say, it maintains a disciplined marketplace and an honest marketplace, and that is absolutely critical.

As we see the expansion, though, of electronic activities, people investing over the Internet, stocks being held electronically—where no paper in some instances being used—obviously you are facing a brand new set of challenges, and my first question is what are your plans for the challenge of this explosion of new type of investment activity, and what do you need in the way of resources to address this brave new world?

Mr. LEVITT. That's a big question, and there's not a simple answer to it because the markets, as I see them, will be new kinds of markets. New electronic markets are developing almost by the day. Those aren't just using the Internet. They are actual new marketplaces that have been organized, and growing.

As far as the Internet is concerned, we have a special task force specifically assigned to monitoring the Internet, to evaluate offerings that are being made. And those of you that are computer literate know how outrageous some of those offerings are, and we're bringing cases wherever appropriate.

We had a case not too long ago involving the sale of several million dollars of investments in a nonexistent eel farm. To think that almost 100 investors put up money for this bogus scam is unbelievable unless you begin to surf the Internet and see the offerings that come through there.

We have fairly sophisticated means of surveiling the Internet, and we have a web site which invites investors to report instances of their being subjected to Internet fraud.

It's not a question of resources, I think, because you couldn't possibly—there are insufficient resources to do a totally comprehensive job and eliminate all corruption. What we can do is be pretty pointed in terms of what we're going after, as to what we see as a national phenomena, and bring cases in those areas. And I think we can do that with existing resources.

#### ORGANIZED CRIME

Senator GREGG. In another area along this line, we saw reports today where there were a certain number of companies, I think it was 19 companies, that are being investigated—small companies—as potentially involving organized crime, using one of the national securities exchanges.

Can you give us your thoughts as to the penetration of organized crime into the use of the national securities exchanges, and what your thoughts are relative to your response to it?

Mr. LEVITT. The reports that have been documented in recent weeks suggest that a number of smaller brokerage firms have had some mob influence, some infiltration. I don't think that's necessarily particular to this time. I think through the years there has been some of that.

I believe that it's relatively limited. The Commission is well aware of this practice. I cannot, at this moment, speak about what we are doing, but I would be glad to brief you privately in terms of our efforts to get at it. But rest assured that it's something that we're very cognizant of, and an area where we are taking steps.

## MUTUAL FUND PROBLEMS

Senator GREGG. With the proliferation of mutual funds, and this being another exploding area of regulatory oversight, can you give your thoughts on the main problems that we have in this area, and whether you need additional resources?

Mr. LEVITT. With respect to mutual funds, I guess I worry about the millions of new investors who have taken their money initially from savings deposits, certificates of deposit in savings institutions and banks, at a time when we have disintermediation, and they could get better returns on mutual funds than they could get in the banks.

The results were so affirmative that it was a short step for them to invest in equity funds, and that worked so well that they began to invest in country-specific funds, the Singapore fund, the Malaysian fund, the Mexican fund, the Brazilian fund, and so forth.

I guess I worry that there are millions of these investors who have not experienced a down market, and I am greatly concerned about how they will react when the market does have a reaction.

Markets go two ways. We try to stress that in our investor town meetings that we hold all over America. But I think there is an inadequate appreciation, for instance, of the value of a security that may be traded on the Kuala Lumpur Exchange. It simply is not comparable to one traded on the New York Stock Exchange. So a process of education has to take place.

I'm also concerned about the circumstance that, even though we have billions of dollars more in mutual funds, the fee structure of those funds appears to be going up rather than down. That's counterintuitive. It's not appropriate for the SEC to tell the industry what they should charge in fees. It is appropriate, I think, for us to try to get mutual funds to display clearly what they are charging, and allow investors to make competitive determinations.

I think right now most investors have a very inadequate notion as to, No. 1, what they're being charged, and, No. 2, what an enormous impact even a few points may make in terms of the impact on their investments. These are areas that concern me.

We have also been concerned about mutual funds whose names really give very little indication as to the direction of fund investment. We have put out a proposal that at least 80 percent of every fund called a bond fund, has to be in bonds. If it's called a foreign fund, 80 percent has to be in foreign securities. So I think misleading names are something that we're concerned with. These are three very different and very general areas that concern me about the mutual fund industry.

## MUTUAL FUND FEES

Senator GREGG. In the disclosure of fees area, do you need any additional legislation or do you feel you have adequate authority now to create a playing field where people are disclosing fees?

Mr. LEVITT. I think we have adequate authority. We have worked well with the self—well, it's really the trade organization for the mutual fund industry, the ICI, and they've been responsive to problems that we point out. I'd rather get some of this through persuasion rather than legislation.

As you know, when you seek legislation it's necessarily pretty indefinite as to what you get, or when you'll get it. So I'm reluctant to start down the legislative road unless I absolutely have to.

Senator GREGG. Senator Hollings.

#### STOCK MARKET INFILTRATION

Senator HOLLINGS. With respect to the infiltration, you might say, of the Mafia in the securities business, the FBI has reported their concern. It intrigues me, why would they want to try to get in. How would that be? I mean, you've got the most regulated, controlled, overseen, observed industry I know of. How could they hope to mislead or take control or really benefit?

Mr. LEVITT. Well, I think they can do it in a variety of ways. These are very tiny firms. Most people when they look at our securities markets today think in terms of Smith Barney or Alex Brown or firms like that. But virtually every day there are teeny, tiny firms growing up, with two, three, four, five people, and very low capital structures. And I think those firms that may be hungry for business occasionally are induced to do business with people who have questionable backgrounds.

Senator HOLLINGS. Should you require a higher capital structure?

Mr. LEVITT. I don't think in and of itself that would do it, because I think we've got to do it by a different means. Again, what I would like to do, if it is of interest to the committee, is give you a briefing together with the head of our Enforcement Division on exactly what we are doing.

Senator HOLLINGS. At least you should give that to the chairman. Because we're looking at that, and we just don't want to be caught just looking and not responding.

Mr. LEVITT. I understand.

#### NATIONAL SECURITIES MARKETS IMPROVEMENT ACT OF 1996

Senator HOLLINGS. With respect to the Improvement Act, is it working as you see it?

Mr. LEVITT. Yes; it is working, and I am very grateful for your involvement with Chairman Bliley in terms of trying to rationalize the irrational.

Senator HOLLINGS. Well, what's the long-term effect of those 6(b) stock registration fees?

Mr. LEVITT. Are you talking about——

Senator HOLLINGS. The long term.

Mr. LEVITT. The 10-year plan essentially is to lower the fees over that period to a point where the Commission will be funded almost entirely by appropriated funds.

Senator HOLLINGS. And right now with everything up, you've got more than enough money.

Mr. LEVITT. We do, because volume has been great. We've had a one-time aberration in the collection of fees, and we've also just kicked in the payment of fees by the NASD which is new this year. So we look flush at this point.

Senator HOLLINGS. But you can't use the money unless the chairman here appropriates it.

Mr. LEVITT. That's right.

Senator GREGG. And I cannot do that unless the ranking member tells me how to do it. [Laughter.]

#### PREPARATION FOR A MARKET EVENT

Senator HOLLINGS. After that 1987 crash, Mr. Chairman, you were there, and now do we need anything when the market—it was down 60 points today, unless you can say something like Alan Greenspan and bring it back up 60. We'd be delighted to hear that kind of comment. I would welcome that.

What happens? Do we have adequate safeguards so that we don't have to experience another 1987 when we politicians see it going up and down 150 points, that kind of thing? We don't want it to drop 500 like it did in 1987.

Mr. LEVITT. I don't think there are any such safeguards, Senator. I think books will be written on what occurred in 1987, and probably they will all be wrong. That kind of event certainly could happen again, although my experience in the markets tells me that no two market events are precisely alike.

What I can say, however, is that the means of communication between the various market centers are vastly improved from that period in 1987. So that within a matter of seconds, I can be in touch with every major market center in the United States.

I guess I have a greater concern in terms of the globalization of our markets, where I worry less about the trading between Smith Barney and Chase Bank than I do between an American brokerage firm and a Japanese insurance company.

And I have a very imperfect notion as to the bankruptcy laws or the netting agreements in some foreign country. And I think with the volume of trading going on there, that is an area of concern.

Senator HOLLINGS. Do you have a special little team within the SEC now that is watching that from day to day?

Mr. LEVITT. Yes; we have an international——

Senator HOLLINGS. Good. Now that I've got money, I want to make sure we're doing everything. You and I are usually poor mouthing each other. But now that we're rich here this afternoon, we ought to have at least a little division, no kidding, of experts watching that fellow back out in Thailand and wherever.

Mr. LEVITT. We do. But again, markets wouldn't be markets if they didn't have the kind of volatility that made them markets. I think we are better prepared, but that is no guarantee against a market reaction.

I'm glad you didn't ask me where I thought the market was going.

#### FEDERAL/STATE REGULATORY RESPONSIBILITIES

Senator HOLLINGS. To go back to the other extreme, to the little State-run securities, you have got the oversight responsibilities and the safeguards are adequate?

Mr. LEVITT. I think so. The bill last year relieved a lot of the pressure on the industry that was occasioned by duplicative regulation from both State and Federal sources.

And we have gotten the States out of regulating mutual funds, and in return for that we've given the States the responsibility for

the regulation of the smaller investment advisers, the most rapidly proliferating part of our markets.

And we've taken on the responsibility of monitoring the largest investment advisers, which represent about 96 percent of the dollars in that area. I think that's a rational division of responsibility, and I am hopeful that it will work well. We're certainly better off than we were before.

Senator HOLLINGS. Very good. Thank you, Mr. Chairman.

Senator GREGG. Senator Campbell.

#### PUBLIC UTILITY HOLDING COMPANY ACT

Senator CAMPBELL. I just had one question, Mr. Chairman, and it might not be a major portion of Mr. Levitt's domain. But one of the big issues we're dealing with here is the impending utility deregulation.

And your agency enforces the Public Utilities Holding Company Act, as I understand it, which has a rather large increase of registrations. I was wondering if you could speak to that a bit about what you anticipate, what you think it might do to the markets, and if your agency is prepared for that increased trend as we go to a full blown deregulation?

Mr. LEVITT. Well, Brian, would you like to address that yourself? This is Brian Lane, the Director of the Division of Corporation Finance.

Mr. LANE. You were referring to the Public Utility Holding Company Act of 1935.

Senator CAMPBELL. Yes.

Mr. LANE. The Commission staff conducted a study of the act. And in that study, which was given to the Members of Congress, the staff recommended several options, including the ultimate repeal of the act. There were other options, such as giving exemptive authority to the Commission, to exempt utilities from some of the provisions of the Public Utility Holding Company Act.

Back in 1935, there was a very diverse universe of utility companies, and the act, as it's set up, requires things such as that electric utility companies can't own gas companies, that all utility lines have to be geographically linked together.

What we're finding today is the technology exists to permit a company that's located in Alabama to sell electricity to a customer in California.

In fact, the States of California, and, I believe, Rhode Island as well have been researching things like retail wheeling. So the technology is such that it eclipses the act.

Senator CAMPBELL. So you feel it's sort of outlived its usefulness?

Mr. LANE. Well, the study points out what some of the shortcomings are. This is a study that was issued 2 years ago, and it has some recommendations from the staff about ways that Congress could change the law. If Congress didn't want to repeal it, there were other options as well. Turn it over to the States for example.

The States, of course, are very much into ratemaking and regulation. There are other agencies like FERC which are into ratemaking of the electric and gas markets. In 1935, the protections of the 1933 and 1934 acts, the securities laws, just giving disclosure

to investors about these public utility companies, how much money they make, how they do business and all that sort of thing, were not as much in place as they are today. Today investors are protected by the disclosures that the SEC gets under its other statutes.

So the needed protection is more on the ratepayer, but is the SEC the appropriate agency to protect the ratepayer? That is the sort of general question the study addressed the SEC, within its existing legislative framework, is trying to address the technological developments of the public utility companies, addressing them on a case-by-case basis, to let the companies diversify and take advantage of other sorts of flexibility.

Senator CAMPBELL. That's all I have, Mr. Chairman.

#### CARRYOVER FUNDS

Senator GREGG. We were talking a little bit about your money situation. I think it is about \$48 million you are going to carry over, and you are headed toward \$71 million. What do you plan to do with all this money?

Mr. LEVITT. We can't use it without you, obviously. We've kept a pretty reasonable budget, I think. And we don't call on those dollars without the approval of our funders.

Senator GREGG. Does the Office of Management and Budget know you have all this money?

Mr. LEVITT. I think they do, yes.

Senator GREGG. You are lucky you still have it.

Well, we certainly appreciate your coming down and giving us your thoughts. Obviously we are here to try to be helpful and supportive as you run into these issues. You are riding a tiger, and so to the extent that things change where you need more resources for the issues that come at you, gives us fair warning, and we will try to help you. The SEC is an extremely critical agency, in my view, for maintaining the strength of this country and our prosperity.

Mr. LEVITT. I appreciate that, everything you're doing for us.

Senator HOLLINGS. You're doing an outstanding job.

Senator GREGG. Yes, you are.

Mr. LEVITT. Thank you very much.

#### ADDITIONAL COMMITTEE QUESTIONS

Senator GREGG. I ask unanimous consent that additional questions may be inserted in the record as Senators may have them.

[The following questions were not asked at the hearing, but were submitted to the Commission for response subsequent to the hearing:]

#### QUESTIONS SUBMITTED BY SENATOR PETE V. DOMENICI

##### NATIONAL STANDARDS AND FEDERAL SECURITIES LITIGATION REFORM

*Question.* In December 1995, Congress passed the Private Securities Litigation Reform Act of 1995 (PSLRA). The legislation was designed to limit abusive securities fraud lawsuits in federal court. However, in the year since enactment of securities litigation reform, some potentially disturbing trends have developed.

First, securities litigation in state courts appears to have increased, particularly in California. Most of this litigation is brought by one law firm, which appears in 83 percent of all securities litigation brought in that state.

Second, it appears that trial lawyers have figured out ways to circumvent the new law's procedural rules designed to limit frivolous lawsuits. Class action attorneys have begun to file parallel lawsuits both in state and federal court in order to get around the federal law's discovery stay provisions. Trial lawyers then use discovery obtained in state court to bolster their federal class action complaints.

Third, trial lawyers still sue high technology companies at an alarming rate. One out of three defendants in securities fraud class actions are technology companies. This is the same percentage as before the new law.

This leads me to conclude that we need one set of laws to govern the procedural and substantive law related to securities litigation.

In the House, there appears to be bipartisan support for the idea of "national standards." A recent letter to President Clinton in support of "national standards" had the signatures of almost 60 Democratic members.

What data can the Commission provide on the increase of securities-related litigation in state courts since the enactment of the PSLRA? Has securities-related litigation in state courts increased? Have potential federal claims migrated to state court?

Answer. As you may know, the Commission was asked by President Clinton to report to him and the Congress on the first year of practice under the Private Securities Litigation Reform Act (PSLRA). That report will be issued shortly and will provide more detailed information relevant to these questions.

In preparing the report, the Commission staff found it difficult to obtain data about the number of securities-related cases filed in state court. Although the staff has been closely tracking all federal securities class actions (a less difficult task since the PSLRA requires that a public notice be given), the staff has relied on data compiled by others in assessing the incidence of securities class actions in state courts.

Based on the staff's review, it appears that during the first year following enactment of the PSLRA, state courts have seen an increase in both stand-alone securities class actions and class actions that are parallel to federal actions. One study by the National Economic Research Associates found that 78 cases had been filed in the first ten months of 1996 (for an annualized total of 94), as compared to 48 for the previous year.<sup>1</sup>

According to the staff's report, some potential federal claims may well have migrated to state court. Following enactment of the PSLRA, some plaintiffs appear to have been drawn to state court by the potential for obtaining discovery during the pendency of a motion to dismiss, a procedure that is not available under the PSLRA. These plaintiffs may be able to use state discovery procedures to uncover facts necessary to frame allegations sufficient to withstand a motion to dismiss, either in the state court proceeding or in a subsequently filed federal complaint.

State court, however, does not always provide a favorable forum for plaintiffs. Jurisdiction over the defendants must be established in the particular state, and state law must provide a private right of action for the plaintiffs' alleged securities claims. Also, some state courts have imposed discovery stays similar to those required under the PSLRA.

*Question.* Is it appropriate for trial lawyers to file suit in state court to evade the federal law's new discovery provisions?

Answer. In the Commission's view, is it appropriate for trial lawyers to use discovery obtained in state court in order to bolster a federal securities fraud complaint?

*Question.* Can the Commission provide this information without improperly commenting on the merits of any pending securities litigation cases in a manner which might prejudice the outcome of these cases?

Answer. The Commission has not taken a formal position on these issues. In preparing the report, however, the staff found that some of the state cases have been brought for the primary purpose of obtaining discovery that would otherwise be unavailable in federal court under the PSLRA. To the extent that state courts can be used to avoid the discovery stay in cases that would otherwise have been brought under the federal securities laws, one of the goals of the PSLRA may be frustrated. It should be recognized, however, that state courts may offer other advantages to plaintiffs, including non-unanimous jury verdicts, punitive damages, and aiding and abetting liability, depending on the jurisdiction. On the other hand, few states provide state law remedies for private plaintiffs that are as broad as the federal remedies for securities fraud. For this reason, state court has not traditionally been the primary forum for securities class actions. If state law provides advantages to plain-

<sup>1</sup>Denise N. Martin, Vinita M. Juneja, Todd S. Foster and Frederick C. Dunbar, "Recent Trends IV: What Explains Filings and Settlements in Shareholder Class Actions?", National Economic Research Associates (1996), at 7.

tiffs in a particular case, it is reasonable to expect that plaintiffs' counsel will utilize the state courts.

*Question.* Is the Commission willing to look at the idea of developing one set of national standards for securities litigation?

*Answer.* After little more than one year of experience under the PSLRA, we think it is simply too soon to tell if state law securities actions pose a significant problem. It is important to recognize that state securities laws have always provided different standards for securities activities from state to state. The states have a traditional interest in protecting their citizens, particularly against fraudulent activities within their borders.

The federal securities laws are concerned with preserving and strengthening our national securities markets and protecting investors. If it is determined that securities actions brought under state law are adversely affecting investor protection or are threatening the fair and efficient functioning of our markets, we certainly believe the Commission should consider an appropriate response—one that is carefully tailored to address the specific problem. In the meantime, if Congress determines that there is a need for some form of preemption, we think that it would be desirable to craft the narrowest possible preemption that recognizes legitimate state interests, while addressing any abuses that may result from the use of state law in private securities actions.

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#### QUESTIONS SUBMITTED BY SENATOR BEN NIGHTHORSE CAMPBELL

##### STREAMLINING INITIATIVES

*Question.* Mr. Levitt, I am encouraged by the “no-growth” budget you propose for the SEC for fiscal year 1998—I wish other agencies had similar restraint. You also acknowledge, however, that this budget, essentially the fiscal year 1997 level, would stretch your resources to the maximum while fulfilling your responsibilities. This is also quite encouraging. A government agency maximizing its resources is welcome, yet too rare. This encourages me, but gives me pause, because it is rare.

It surely would be nice if the SEC did maximize its resources while fulfilling all its responsibilities to the investor. Your budget suggests that your resources instead will be sorely tested. And, as you rightly point out, the SEC has a vital role in maintaining investor confidence in our markets.

Given that, in the budget estimate, the SEC notes several important developments: there is increased internet fraud, increased foreign participation in our securities markets, more global activity affecting our markets, more defendants choosing to litigate, as well as a marked increase in the sheer volume of securities offered and traded. These changes are well under way while enforcement of securities laws is your primary mission.

With these new and significant developments adding more pressure to your enforcement staff, you must find new ways of maximizing your resources. Yet, in the budget, for the “Prevention and Suppression of Fraud” program, you say you will solve this by “streamlining initiatives.”

What are these SEC initiatives that need to be streamlined, and why do you have initiatives that are not already streamlined? In the same program, you tell us that “other initiatives are needed to ensure sufficient support”. What are these initiatives and how long until they are implemented? Is there reason to be concerned that there is not sufficient support in the meantime?

*Answer.* Enforcement of the federal securities laws is not static. As with other law enforcement agencies, we must always be ready to deal with new enforcement challenges as they are presented. For example, the Division recently devoted significant resources to the investigation of a variety of issues surrounding the bankruptcy of Orange County and to our review of the Nasdaq market and the National Association of Securities Dealers. While our resources are finite, we continue to believe that one of the strengths of our program is our ability to adapt promptly to problems in the capital markets requiring an enforcement response. Our allocation of resources is under continuous review as we uncover and prioritize to meet new enforcement challenges.

We believe we have improved our program's effectiveness through initiatives undertaken to streamline some of our processes, as our budget submission indicates. The examples given were expediting authorization for formal orders and for subpoena enforcement. These initiatives were the result of a review of our processes undertaken at the suggestion of Chairman Levitt. Initiatives which we have identified but not yet completely implemented include primarily those that will introduce benefits from new technologies to support improved document management (includ-

ing optical scanning) and improved casetracking and reporting. These long-term projects currently are underway.

We always are seeking ways to improve our processes, including incorporation of new technology. In our budget submission, however, we did not mean to suggest that we were looking at such improvements to substitute for our continuous need to allocate resources, or that identified proposed improvements to our processes are being ignored.

#### ELECTRIC INDUSTRY RESTRUCTURING

*Question.* First, to what extent do you think this trend is in anticipation of electricity industry restructuring?

*Answer.* We are seeing an increase in the number of registrations under the Public Utility Holding Company Act (PUHCA). In particular, approval of currently pending and expected merger applications would result in five new registered holding company systems. In our view, the trend is largely a reflection of industry restructuring. Utilities are positioning themselves to compete successfully as the industry evolves from a monopoly structure into an energy marketplace with many diverse participants.

*Question.* In as much as this trend may be an anticipation of electricity industry restructuring, there is likely to be an even greater increase in the number of registrations this year. Is the agency adequately prepared to meet this new trend?

*Answer.* As you know, the Commission has called for legislative repeal of PUHCA. If the Act is not repealed relatively soon, and registrations of utility systems continue to increase, we will likely need to allocate additional staff to our Office of Public Utility Regulation. PUHCA contemplates detailed substantive review and monitoring of numerous activities and transactions by registered system companies. Currently, the Office of Public Utility Regulation has only 16 professional employees. These resources are already stretched in the effort to carry out all the measures needed to ensure the registered systems' continuing compliance with PUHCA.

#### PUBLIC UTILITY HOLDING COMPANY ACT

*Question.* Finally, do you think PUHCA has outlived its usefulness?

*Answer.* Yes, I believe that the burdens imposed by PUHCA significantly outweigh its usefulness. Until the advent of full-scale competition in the industry, however, the remaining monopoly power of utilities will continue to make consumer protection a necessity. The Commission supports repeal of PUHCA, accompanied by additional authority at the state and federal level for the continued protection of consumers, by providing for access to books and records, and federal audit and oversight of affiliate transactions.

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#### QUESTIONS SUBMITTED BY SENATOR ERNEST F. HOLLINGS

##### OFFSETTING COLLECTION FEES

*Question.* Chairman Levitt, in last year's Securities Improvement Act, we compromised with the House Commerce and Senate Banking Committee to create a new funding stream for the SEC. Specifically, the 6(b) stock registration fees were to be reduced over time and a new NASDAQ transaction fee was created.

How is the new transaction fee coming? What are your revenue estimates for fiscal year 1998? Since the NASDAQ over the counter market keeps growing so much, won't these fee collections also greatly increase above current projections?

*Answer.* To the best of our knowledge, the new NASDAQ transaction fee is coming along just fine. The National Association of Securities Dealers (NASD) has in place a monthly fee tracking and collection process that it began with the start of the new fee in January 1997. The NASDAQ transaction fee rate is 1/300 of 1 percent of the value of each sale. In calendar year 1997, the NASDAQ fee is due to the SEC on September 30 for all covered calendar year transactions that occur through August 31. In subsequent years, the fee is due on March 15 for transactions that occur during the prior September 1 through December 31, and on September 30 for transactions during the prior January 1 through August 31.

The NASDAQ fee estimate for 1998 is \$120.3 million. This fee estimate is higher than the \$93.4 million estimate made just one year ago for the same period. Therefore, should the growth in NASDAQ continue at as high a rate as it has over the last two years—over 50 percent in 1995 and over 30 percent in 1996—actual fees received should increase above current projections. However, estimates are only educated guesses. We cannot project future fee collections with any degree of certainty.

*Question.* What do you think will be the impact of reducing 6(b) registration fees over time?

*Answer.* The reduction in 6(b) registration fees may facilitate capital formation. With a lower cost for registration, additional U.S. and foreign issuers, both large and small, may seek public funds rather than more expensive private financing. The reduction will also shift the agency's reliance on offsetting collections for its budget authority and require additional appropriations.

#### ENFORCING AND REGULATING THE MARKET

*Question.* In a recent newspaper article, it reported that SEC had concluded an 18-month investigation of the NASDAQ Stock Market, in which SEC found that market makers coordinated their quotations so that investors paid too much and received too little when they bought and sold stock on the NASDAQ Stock Market.

What is the SEC doing to ensure that this type of activity does not happen again?

*Answer.* As part of the NASD's settlement with the Commission, the NASD agreed to undertake a number of initiatives aimed at eliminating the anti-competitive behavior uncovered in the investigation. The Commission is closely monitoring compliance with these undertakings. Many significant improvements are underway.

In order to comply with the settlement, the NASD, among other things, must devote an additional \$100 million over five years towards enhancing its surveillance and examination of order handling and trade reporting, develop rules regarding the activities and competitiveness of market makers, and create an audit trail that is capable of tracking an order from receipt through execution. It also split off its regulatory function into a unit that is separate from the Nasdaq market and has created more balanced boards and committees with 50 percent non-member representation.

In addition, the Commission adopted order execution rules that will go a long way in eliminating the ability of market makers to coordinate their public quotations. These rules have begun to be phased in. They were designed to benefit investors by increasing transparency, providing access to the best available prices, enhancing quote competition between market makers, and introducing new competition from the display of customer limit orders.

*Question.* What do you think about current levels of mutual fund fees and investor understanding of those fees?

*Answer.* Whether mutual fund fees are higher today than in the past or whether these fees are generally higher than they should be are questions that have been debated by fund observers. Some commentators, noting that mutual fund expenses, as a percentage of net assets, have increased in the past decade, argue that the cost of owning mutual funds has risen. Other observers disagree, pointing out that many funds now incur certain sales and marketing costs that were formerly paid directly by investors through sales loads. As a result, these observers argue, it is not clear whether overall fund costs have risen or fallen.

Any evaluation of fund fee levels needs to include consideration of the types of services investors are receiving for their money. Fund investors today seem to be offered services that may well be more costly to provide. International funds, an increasingly popular category, for example, provide additional opportunity for diversification, but are a relatively costly type of fund. In addition, many fund groups have introduced new and improved services over the past decade, including sweep accounts, telephone redemption and exchange privileges, check or wire redemptions, consolidated account statements, automated yield quotations, and access to account information via the Internet. While most are beneficial to investors, these services do tend to increase the cost of holding funds.

Over the past ten years or so, the Commission's principal focus, with respect to fund fees, has been to ensure that they are well disclosed and understood. In seeking these goals, the Commission, in 1988, took the important and innovative step of requiring all mutual funds to disclose their expenses in a fee table in the front of their prospectuses. We understand from focus groups and surveys that investors find the fee table most informative and helpful. As part of a recent set of proposed rulemakings designed to improve prospectus disclosure, the Commission proposed certain enhancements to the fee table.

Although we believe the mutual fund fee table provides meaningful information about fees to fund shareholders, we remain concerned that many investors may not understand the operation and effects of fees. A 1995 joint survey undertaken on behalf of the Commission and the Office of the Comptroller of the Currency found, for example, that few fund shareholders appreciate the relationship between fund expenses and fund returns.

To deal with this potentially troubling situation, the Commission has undertaken a number of initiatives. As noted above, the Commission recently proposed enhance-

ments to fund fee tables. We also have continued our efforts to educate shareholders about the importance of fees. The Commission has published a brochure about investing in mutual funds that has been widely distributed and that includes a section on the importance of fees. We also have discussed the topic in detail in town meetings and speeches across the country. Most recently, we have sought to encourage the fund industry to take greater initiatives in educating investors about fees.

#### MARKET GROWTH

*Question.* The SEC and others have reported that in the last year the stock market has grown to be worth over \$10 trillion. However, with this huge growth the market hardly seems stable as it periodically seems to have substantial drops. For example, in January the Dow Jones industrial average tumbled 164 points in two days and on Monday, March 17, the Market slid as much as 81 points.

Following the 1987 crash, SEC put in place safeguards to put breaks on trading during precipitous sell-offs. Given the growth in the markets since 1987, are you comfortable that these safety measures are still adequate? What if Alan Greenspan says the wrong thing again?

*Answer.* We recognize that every market event is different and that it is not possible for regulators to implement procedures to address every possible contingency. Nevertheless, the Commission has taken the lead in a number of regulatory initiatives since the market break in October 1987 that are designed to reduce potential disruptions and systemic risks from a severe short-term market decline.

#### *Coordination and Information Exchange*

*Improved Interagency Coordination.*—Since 1988, the President's Working Group on Financial Markets has provided a useful forum for key financial regulatory agencies to share information and coordinate responses to market contingencies such as severe market declines.

*Improved Intermarket Communications Systems.*—Following the market break in 1987, the stock, options, and futures markets implemented a new "hoot-n-holler" teleconferencing system, known as the Information Network for Futures, Options, and Equities (INFOE). The SEC and CFTC also have access to this system, which has proven extremely useful for distributing information among markets and regulators during recent sharp market swings. In 1994, a similar teleconferencing system was implemented to link the SEC Chairman with the heads of the nation's securities markets and clearing organizations.

#### *Market Controls*

*Circuit Breakers.*—Circuit breakers were adopted in 1988 to provide for brief, coordinated trading halts to give markets and investors opportunities during a severe price decline to assess market conditions and any operational or financial difficulties that may have arisen. In July 1996, we approved shortening the marketwide circuit breaker halts by 50 percent and in January 1997, we approved increases in the trigger levels by 40 percent to partially correct for the change in market levels from 1988. Currently, circuit breakers call for a 30 minute halt if the Dow Jones Industrial Average (DJIA) declines 350 points in a day and for a one-hour halt if the DJIA declines 550 points.

*Other Volatility Procedures.*—Other volatility procedures also have been adopted by the markets since 1987. The stock index futures markets have adopted intra-day and daily price limits that are designed to slow a severe decline. The New York Stock Exchange (NYSE) also has implemented procedures to address program trading during sharp market swings. NYSE Rule 80A(c) ("Collar Rule") requires that, if the DJIA moves up or down 50 points from the previous closing value, program orders to buy or sell stocks as part of index arbitrage strategies must be entered with directions to have the order executions effected in a manner that stabilizes share prices. In addition, if the S&P 500 futures decline 12 points (roughly equivalent to 100 points in the DJIA), the NYSE implements its "side-car" procedures to temporarily route program orders to separate electronic files to assess possible order imbalances.

*Expanded Emergency Authority for the SEC.*—The Market Reform Act of 1990 provides the Commission with additional authority to issue rules on an emergency basis and, under extreme conditions, to order marketwide trading suspensions provided that the President does not object.

#### *Capacity Enhancements*

*Increased Market Capacity.*—Computer capacity at the securities markets has been increased substantially since 1987 and it appears that the markets generally are ready for extremely volatile trading days. Most exchanges have excess capacity

of almost three times or more over that needed for an average trading session. The NYSE is averaging 505 million shares per day and reports that its systems could handle up to 2.5 billion shares, or five times average capacity. The Chicago Board Options Exchange is averaging 733,000 contracts per day and has capacity to handle 2 million contracts, or almost three times average capacity. Nasdaq has average volume of approximately 622 million shares with a capacity of one billion shares without affecting normal system operation.

*Increased Capacity at Broker-Dealers.*—Our overall assessment is that the major broker-dealers' computerized trading systems are ready for volatile trading days. The major broker-dealers have around two times capacity over that needed for an average trading session. We further believe that the major broker-dealers have adequate on-line performance monitoring during the trade day which helps identify potential choke-points and provide the means to re-route message traffic to alleviate queuing. The major broker-dealers have adequate capacity modeling and verification of models used, and adequate budgeting to procure necessary hardware. The major broker-dealers also have taken steps to keep their systems ahead of projected transaction message growth rates. When compared to the status of the capacity of computerized systems in 1987, the broker-dealers are generally ready for extremely volatile trading days.

#### *Capital and Internal Controls*

*Improved Broker-Dealer Capitalization.*—In the event of a major market downturn, the capital adequacy at the major broker-dealers, the market-makers, and the regional firms will be tested. No significant broker-dealer failed in 1987, and firm capitalization has increased substantially since 1987. The major firms have sufficient capital to withstand substantial losses associated with a severe equity market drop. As of September 30, 1996, broker-dealers filing FOCUS reports with the Commission had approximately \$1.6 trillion in total assets and \$95.6 billion in total regulatory capital (equity capital plus qualifying subordinated debt).

*Reduction in Relative Equity Positions at Large Firms.*—Equity position market value vis-a-vis total assets at these firms have diminished since 1987. The market value of equity positions of these firms at the end of September 1987 was only a relatively small fraction of their total assets—in most cases less than 5 percent of the total assets of the firms. The market value of equity positions of these firms at the end of September 1996 was smaller than in 1987, comprising approximately 2 percent of the total assets of these firms. This indicates a reduced market risk exposure on proprietary positions.

*Improved Securities Investor Protection Corporation Financial Condition.*—In the event of a failure of a retail broker, SIPC has taken action to increase the size of its insurance fund. In 1987, the SIPC fund totaled approximately \$379 million. As of February 15, 1997, the SIPC fund had a balance of approximately \$1 billion. In addition, SIPC has access to a \$1 billion line of credit established with a consortium of banks and statutory authority to borrow up to \$1 billion from the U.S. Department of the Treasury, through the Commission.

*Enhanced Internal Controls/Operations.*—In the event of a severe market downturn, the internal controls and operational procedures of broker-dealers will be tested. The advancement of technology also has reduced the likelihood of processing/clearing delays caused by the break. Clearing firms now have substantially increased clearing capacity and are able to handle substantially greater transactional volume. In addition, the events of 1987 demonstrated that the SEC's customer protection rules worked well. Risk management policies have been improved substantially since 1987 at the major securities firms.

#### *Improvements in Clearance and Settlement*

*Adoption of T+3 Settlement.*—On June 7, 1995, the Commission established a standard three-business-day (T+3) settlement timeframe for most broker-dealer transactions. T+3 settlement reduces risks in the clearance and settlement system by eliminating two days of potential participant default. Clearing organizations and the securities industry in general modified their procedures to effectively implement the T+3 settlement cycle.

*Same-Day Funds Settlement System.*—On February 22, 1996, the industry took a major step in addressing the finality of payments in the clearance and settlement system and the liquidity requirements of clearing members by converting to a same-day funds settlement system. Payment is made in funds that are immediately available and final at the time of settlement. The goal of SDFS is to reduce risk in the clearance and settlement process by simplifying cash management, reducing overnight exposure, and achieving close conformity with payment methods used in derivative markets, government securities markets, and other markets.

*Cross-Margining at The Options Clearing Corporation (OCC).*—Since 1987, OCC has established several cross-margining programs. Currently, OCC has entered into cross-margining agreements with the Intermarket Clearing Corporation, the Chicago Mercantile Exchange, the Board of Trade Clearing Corporation, the Comex Clearing Corporation, and the Kansas City Board of Trade Clearing Corporation. The cross-margining programs are designed to increase liquidity and depth to markets by reducing clearing members' combined daily margin requirements and by reducing potential for financial gridlock, particularly during volatile markets when clearing organizations may demand additional clearing margin from their members. These programs utilize participants' end-of-day positions to determine combined daily margin requirements.

*Risk Control Improvements at OCC.*—OCC has developed and implemented a number of other major system enhancements to reduce risk in the clearance and settlement system for options including (1) a sophisticated, risk-based, methodology for calculating margin, (2) an electronic notification and approval system for settlement processes, and (3) a sophisticated risk analysis system designed to help OCC clearing members and exchanges manage the risk of their customers and members in the same manner that OCC manages its risks.

*Cross Guarantee Agreements.*—Cross guarantee agreements are agreements between clearing agencies which generally provide that in the event of a default of a participant common to both clearing agencies, any resources remaining after the failed common participant's obligations to one clearing agency have been satisfied will be made available to the other clearing agency. The guarantee is generally not absolute, but rather is limited to the extent of the resources of the failed participant remaining at the guaranteeing clearing agency. The principal resources of defaulting participants will be settlement credit balances, clearing fund deposits, and collateral. The National Securities Clearing Corporation has executed cross guarantee agreements with the Depository Trust Company and OCC. Additionally, MBS Clearing Corporation, Government Securities Clearing Corporation, Participants Trust Company, and International Securities Clearing Corporation have amended their rules to allow them to enter into cross guarantee agreements with other clearing agencies, including futures clearing organizations.

*Collateral Management Service (CMS).*—In 1995, NSCC developed CMS whereby NSCC collects from and provides to participants and other clearing entities information regarding a participant's clearing fund, margin, and other similar requirements and deposits at participating clearing entities. CMS helps clearing agencies and their participants to better monitor clearing fund, margin, and other similar required deposits that protect a clearing agency against loss should a member default on its obligations to the clearing agency. DTC, Stock Clearing Corporation of Philadelphia, Philadelphia Depository Trust Company, GSCC, MBSCC, PTC, and OCC have received Commission approval to participate in the CMS service.

*Creation of the Securities Clearing Group and Unified Clearing Group.*—There have been a number of initiatives since 1987 to improve cooperation and information sharing among the securities and futures clearing organizations. As part of this effort, in 1989 the major U.S. securities clearing organizations formed the Securities Clearing Group and in 1995 joined with the futures clearing organizations to create the Unified Clearing Group.

*Liquidity Improvements at Clearing Agencies.*—DTC, NSCC, and OCC have substantially increased their total participants/clearing funds and their total lines of credit since 1987.

#### MUTUAL FUND INDUSTRY

*Question.* Recent mutual funds topped \$3.5 trillion. What are your greatest concerns about the mutual fund industry?

*Answer.* The \$3.5 trillion is a reflection of the strength and importance of the mutual fund industry. The industry has suffered no major problems in over two decades and we should work with the industry to continue this excellent record. We have some concerns about the industry despite its tremendous growth. We believe we must make every effort to encourage fund investors to become educated; make sure fund information, including risk, is communicated clearly to investors; and maintain the industry's excellent record of compliance in the face of the pressures of increasing competition.

*Fund Shareholders.*—Our greatest concern is fund shareholders. We worry whether the fund industry is doing enough to educate investors not only about particular types of funds, but about investing in general, how to allocate assets and better understand risk, for example. We're trying to do our part on the education front. We're continually trying to educate investors through meetings with investors, preparing

investor brochures, and assisting in the development of high school and college courses relating to investing.

*Disclosure.*—We have met with investors from throughout the country. So many of these hardworking, intelligent people are putting their hard earned money into funds as a way of saving for their children's college education or their own retirement. We are concerned that the expectations these people have about funds may be unrealistic and will not be met. That's why we've been pressing so hard for funds to use good, clear disclosure in their written documents and for sellers of fund shares to be guided by the highest ethical principles. Expectations are, after all, shaped by what investors read and are told.

*New Entrants.*—The fund industry has grown dramatically over the past 10 to 15 years. We are concerned, on behalf of fund shareholders, that new entrants to the business—like new entrants in any business—may not fully understand their obligations in managing fund assets and selling fund shares. A survey we saw recently of the CEO's of 1,300 domestic and foreign banks and thrifts, for instance, indicated that 25 percent of these institutions have no risk management process for the sale of mutual fund shares. Concerns over new entrants have caused us to focus more of our fund inspection unit's time and attention on those companies.

*Compliance.*—Many have pointed to the extreme competition we are starting to see in the fund business. The competition may well lead to lower fund expenses, which would be most beneficial for shareholders. We are concerned, though, that costcutting could also mean cutbacks of important functions, particularly compliance. That would be a mistake and would hurt the fund business in the long run.

#### INVESTMENT ADVISERS

*Question.* As a result of the National Securities Markets Improvement Act, oversight for over 70 percent of all registered investment advisers will become the responsibility of the states. The SEC will now be responsible for the 8,000 investment advisers that manage portfolios over \$25 million.

What impact will this division of responsibility have on the SEC?

*Answer.* We will be able to reduce our current examination cycle for the advisers who will be registered with the SEC to once every 4–5 years. In the past, examination cycles ranged from every 7–8 years for the largest advisers, to every 44 years for the smaller advisers. The advisers who will remain registered with the SEC and subject to this enhanced oversight manage approximately 95 percent of the industry's assets under management. In addition, we will be able to conduct "targeted inspections" which identify specific topics of regulatory interest (such as with the soft dollar project now underway) as well as continue our routine and cause inspections. In a targeted inspection, we obtain an understanding of how a practice or activity is performed, the types of problems or violative conduct that can arise and whether there is further need for regulatory consideration of the practice or activity.

*Question.* What responsibility will the SEC have to oversee the state run programs?

*Answer.* We will have no direct responsibility. Each state will be responsible for regulating those advisers within its borders that manage under \$25 million. The SEC will not be responsible for overseeing the various state programs. The Improvement Act does, however, direct the SEC to make technical and other assistance available to the states. We have been active in this effort by developing training programs for state regulators, creating SEC internships, conducting joint examinations, and sharing information about examination techniques and about specific advisers that will be solely state-regulated.

*Question.* Does this policy change have any budget implications?

*Answer.* The changes to the Advisers Act were intended to affect the investment adviser program, and not to have a budget impact. This legislation has vastly improved our ability to examine and regulate the adviser population registered with the SEC. To prepare for the legislation, the Commission has reallocated eight existing staff positions to the Division of Investment Management to form a task force to update the Commission's adviser rules. In addition, \$20 million was authorized by the Improvement Act for 1997.

#### ELECTRONIC DATA GATHERING ANALYSIS AND RETRIEVAL [EDGAR] SYSTEM

*Question.* The current EDGAR contract expired in January 1997. You've stated in your written testimony that EDGAR is 10 year old technology and the Improvement Act asked SEC to look into the possibility of privatizing EDGAR by April 9, 1997.

What is the status of the EDGAR recompetition?

Answer. The SEC is currently evaluating proposals received in response to Phase 1 of the solicitation. We are also preparing the report to the Congress that will address the issue of the modernization of EDGAR through privatization.

It is anticipated that once the Congress has provided its guidance on privatization, the SEC will issue Phase 2 of the solicitation and will award a new contract following proposal receipt and final evaluations.

*Question.* Are there funds requested in the President's 1998 budget for the SEC to update EDGAR?

Answer. The 1998 budget request has carried forward the 1997 level of \$8 million for the maintenance of EDGAR operations. This funding level is not sufficient to carry out an EDGAR modernization program.

#### SUBCOMMITTEE RECESS

Senator GREGG. Thank you. Thanks for your time. The hearing is concluded.

[Whereupon, at 2:28 p.m., Wednesday, March 19, the subcommittee was recessed, to reconvene at 2 p.m., Thursday, March 20.]

**DEPARTMENTS OF COMMERCE, JUSTICE, AND  
STATE, THE JUDICIARY, AND RELATED  
AGENCIES APPROPRIATIONS FOR FISCAL  
YEAR 1998**

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**THURSDAY, MARCH 20, 1997**

U.S. SENATE,  
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,  
*Washington, DC.*

The subcommittee met at 2 p.m., in room S-146, the Capitol,  
Hon. Judd Gregg (chairman) presiding.

Present: Senators Gregg, Domenici, Hollings, and Lautenberg.

**UNITED NATIONS**

**STATEMENT OF AMBASSADOR BILL RICHARDSON, U.S. PERMANENT  
REPRESENTATIVE TO THE UNITED NATIONS**

**ACCOMPANIED BY PRINCETON N. LYMAN, ASSISTANT SECRETARY  
FOR THE BUREAU OF INTERNATIONAL ORGANIZATION AFFAIRS**

**OPENING REMARKS**

Senator GREGG. We will start the hearing. I know there are other Members of the Senate that are going to be joining us, but I do not want to hold the Ambassador up. Here is the ranking member right now.

Basically we very much appreciate the Ambassador coming by. I would just say, as a bit of an opening statement, that we have been working with the Ambassador and with the Secretary of State on the issue of arrearages. We have a working group functioning that has been aggressively trying to resolve the problem.

I hope that by the middle of April we will have some sort of an agreed-to position between the Congress and the administration on how to address the arrearages question; how much we will pay; and the manner of the payments and the conditions of the payments.

I personally do not intend to spend any time or any significant time on that issue, although it is deemed to be the most controversial. There is so much going on in the way of trying to resolve it, that I do not think it is necessary to spend a lot of time on it, in my viewpoint.

However, there are other issues, obviously, which involve the United Nations and we appreciate the Ambassador coming today. I would yield to the ranking member for any comments that he might have.

Senator HOLLINGS. Thank you, Mr. Chairman. Just the reality, Mr. Ambassador, of what we face. A couple of years ago we answered up to our responsibilities and Congress took care of the arrearages. We appropriated over \$1 billion.

Twofold: now that you've come back, one question, what did we get for the \$1 billion. No reforms, really. Second question is that unless you get this money in a supplemental, in this Senator's judgment, you're going to have a tough time.

You've got drives and moves on foot to cut back period or to eliminate, like the Department of Commerce. This is State, Justice, and Commerce. And when we get into the final conference and all which you have experienced yourself, they say, wait a minute, why are we so bothered about arrearages and paying that bill when we don't even pay our own bills here in the United States.

And the flexibility of trying to get a conference report, and the bill passed, falls right on that particular U.N. amount.

And we go out on the floor, Senator Kassebaum, on two occasions. Once she got 17 votes, I think, and another time, 21. So we tried. We're not acting in opposition. It's a real problem. Suggestion: please put the pressure on in that supplemental where we can get it done and not put it in the overall budget.

Thank you, Mr. Chairman.

Senator GREGG. OK. We'll be happy to get your thoughts, Mr. Ambassador, in any manner in which you wish to express them.

#### OPENING STATEMENT OF AMBASSADOR RICHARDSON

Ambassador RICHARDSON. Well, first of all, Mr. Chairman, and members of the subcommittee, let me just say it's good to be back home in the Congress. I've been away 1 month, and this is a very challenging job, as U.N. Ambassador.

#### U.N. ARREARS

As the chairman mentioned, in the executive branch we're undergoing a process of negotiating with the congressional leadership, the appropriators, the authorizers, on a package, as the chairman mentioned, that involves the arrearages issue, and subsequent reforms.

And our hope is that we can come up with an agreement, hopefully, within 30 days.

I would only want to make one point, and not go into an opening statement, because I think it's more relevant to answer your questions, plus, as my colleagues may know, I am faced with a potential Middle East resolution in the National Security Council, and if possible I'd like to go back once I'm adequately finished here.

#### U.N. REFORM

The only point I would like to make to the members of the subcommittee is that we do have a Secretary General that is reform minded, that has taken the lead on reforms. And, I know, Senator Hollings, you've expressed some disappointment with those reforms, but I do think that what Annan has put forth, and some reforms that our Government has pushed in the last 2 years under

Secretary Albright, have resulted in a leaner, meaner United Nations.

Let me just go through very briefly these reforms that Secretary General Annan announced on Monday which I think are significant and should be the basis of negotiations along with the Senate, the House, and the administration.

No. 1, the United Nations has a negative nominal growth budget, the budget cap. This is historic. It's \$2.608 billion. They've stuck to it. We think in the next biennium, which is 2 years from now, there will also be a budget cap.

One thousand posts were eliminated. Now, these are jobs which will not be filled again. Secretary Annan will go to the General Assembly and try to get these posts eliminated so that they can never be replaced.

No. 2, a 13-percent reduction of administrative costs, from 38 percent to 25 percent by the year 2001, with the annual savings directed to substantive programming.

No. 3, 25 percent reduction in U.N. documents and paperwork by December 1998.

No. 4, the establishment of a code of conduct, and I know this is very important to Members of the Senate. This is basically a code of conduct for U.N. employees involving financial disclosure, all types of employee behavior, perks that would be eliminated which is considered significant.

No. 5, the merging of three separate development departments into one. This will improve the accounting. This will consolidate three departments of the United Nations on economic issues into one. The merging of the Conference Services Division, General Assembly Affairs Division, another effort at consolidation.

Restructuring the Department of Public Information, country level coordination of U.N. programs, centralized management system, coupled also with other reforms that we stand behind, such as, besides the budget cap, a stronger oversight inspector general operation with the United Nations—the OIOS. Inspector general services, investigation oversight services, which goes in, roots waste out.

They recently did, in the Rwanda war crimes tribunal, three individuals were dismissed because of mismanagement. This is an operation that we want to see have more teeth and that we're strongly supporting.

In addition to that, there are initiatives that deal with, as I mentioned, consolidations, having departments at the United Nations run more efficiently, the merging of other economic and social council agencies.

#### PEACEKEEPING

I would also like to mention peacekeeping, which I know has been a big issue in the Congress and in this committee with many of you taking leadership roles in peacekeeping operations. We have reduced our role in peacekeeping.

We have right now about \$280 million in our cost of peacekeeping—this is the U.S. contribution. In the mid-1990's, it was up to \$1 billion. Instead of there being 75,000 peacekeepers, there are 25,000 right now in the whole U.N. system.

We asked the tough questions on peacekeeping. Every day I spend at the National Security Council where we discuss peacekeeping missions, we ask the questions, what is the exit strategy. What's it going to cost? Command and control. Have we consulted the Congress? What is the mandate?

These questions, through a U.S. effort, are being asked. We do have a more efficient, reform-oriented United Nations.

#### SUMMARY

Let me just summarize: without us dealing with the arrears issue—and the modalities of how we deal with it, I suspect, will be the subject of negotiations—without us paying the arrearages, we cannot go to the United Nations and retain our leverage to pursue our interests at the United Nations, which are substantial; we will not be able to get the scales of assessments reduced for all members.

You know, Senator Hollings, we want to pay less in U.N. dues and in peacekeeping. We want a fairer share for the United States vis-a-vis other countries. In the peacekeeping area, we want to go from 31 percent—close to 31 percent—to 25 percent.

In U.N. dues we want to go down to 20 percent from approximately 25 percent, to conform with what this Congress has wanted us to do.

So we're making progress, and I need that leverage. I need a tangible, good faith financial effort to show that part of these reforms will be an investment in the future, but that our interests in the United Nations, preserving our interests in peacekeeping, preserving our interests in keeping sanctions on Iran and Iraq, and dealing with North Korea, and monitoring elections, and bringing smallpox eradication.

And I know, Senator Hollings, trade issues are very important to you, protecting worker rights and the International Labor Organization. And making sure that we find ways that the United Nations works for the American people. There is a civil aviation entity within the United Nations that deals with airline travel—40 percent of all travelers in the air are American.

#### PREPARED STATEMENT

I could go on and on, but I guess my very abbreviated statement has gotten a little longer. I need your help, and the administration needs your help to forge a bipartisan agreement where we can put this U.N. arrears issue and reform issue to bed in a bipartisan fashion.

And this committee is key in this happening.

[The statement follows:]

#### PREPARED STATEMENT OF AMBASSADOR BILL RICHARDSON

Mr. Chairman, Members of the Subcommittee: Thank you for inviting me here today. This is my first opportunity to appear in front of you since assuming my new duties, and it is both a little strange and a little nostalgic to be sitting on the other side of the dais to discuss the matters before this committee.

After a month in New York, what I have confirmed for myself is that the U.N. remains an institution that is enormously useful for the U.S., and where it is important that we remain engaged.

In recent weeks, we have been able to maintain full sanctions by the international community on Iraq and Libya. We are making sure that the very important U.N.-sponsored peace agreement in Guatemala is able to go into effect, so that American taxpayers do not have to spend money averting problems that are close to home. And in El Salvador, because of a U.N.-brokered and guaranteed peace accord, a military that a few short years ago was fighting a civil war, may soon be contributing to international peacekeeping around the world.

Even prior to my current position, I had already seen firsthand how the United Nations helps further our interests. In North Korea, inspectors from the International Atomic Energy Agency have helped verify that the North Koreans are living up to their commitments not to produce nuclear weapons. In remote parts of Sudan to which Americans have little or no access, I have seen how U.N.-affiliated bodies help protect and feed the victims of terrible humanitarian disaster. In Burma, I have seen how the nations of the world through the U.N. General Assembly have brought hope to embattled democrats by justly condemning a brutal and repressive regime.

Mr. Chairman: With all of those considerations in mind, today I come to discuss with you the Administration's funding request for international organizations and conferences for fiscal year 1998.

I want to spend a few moments outlining the Administration's proposal for the appropriations we are requesting to meet our fiscal year 1998 annual requirements for international organizations and conferences. We are providing additional detail in writing and I ask that it be included in the record.

I am also joined today by Ambassador Lyman, Assistant Secretary for International Organizations, who, along with myself, will be happy to answer any further questions you might have on these issues.

Our proposal includes: for Contributions to International Organizations (CIO), \$969,491,000, which would fully fund our assessed contributions for calendar year 1997; for Contributions for International Peacekeeping Activities (CIPA), \$240,000,000; and for International Conferences and Contingencies (ICC), \$4,941,000.

In addition to these annual requirements for fiscal year 1998, the Administration is requesting funding to pay our recognized arrears under the CIO and CIPA accounts in full. We seek \$100 million in fiscal year 1998 funds, \$54 million for U.N. regular budget arrears in the CIO account and \$46 million for CIPA; and an fiscal year 1999 advance appropriation of \$921 million, as an fiscal year 1997 supplemental, to pay the remaining arrears in both accounts.

Mr. Chairman: This request reflects our commitment to accomplishing three ambitious and demanding tasks over the next few years:

First—the substantial reform and reinvigoration of the U.N. System so that it is prepared and able to meet the challenges of the 21st Century. These include vital security, health, crime and drug control activities—all of great importance to the American people;

Second—reaffirming and sustaining vigorous American leadership within the United Nations. Whether defending our trade interests, maintaining sanctions against aggressor states, or controlling the proliferation of weapons of mass destruction, our leadership is indispensable to protecting our interests;

Third—bringing U.S. financial support of international organizations to a level that is sustainable and supportable by the Congress.

Mr. Chairman, as you know, under the leadership of then-Ambassador Albright, major progress was made towards reforming every aspect of the way the U.N. conducts its business.

I can report to you today that, last Monday, U.N. Secretary-General Kofi Annan took a significant and unprecedented step towards the kind of structural reform that will help the U.N. do more, better and for less.

He had already made a public commitment to carry out those reforms that are within his authority—a commitment he made to Congressional leaders in January. Now, in a detailed and thorough blueprint, he specified a series of ten reform benchmarks. He will begin to implement these benchmarks very soon and extending over the next several years:

- The presentation of a negative nominal growth budget proposal for the 1998–1999 biennium and the elimination of 1,000 posts.
- A 13 percent reduction in administrative costs, from 38 percent to 25 percent by 2001, with the annual savings directed to substantive programming.
- A significant 25 percent reduction in U.N. documents and paperwork by December 1998.
- The establishment of a Code of Conduct.
- The merging of three separate development departments into one.

- The merging of Conference Services Division and General Assembly Affairs Division.
- The restructuring of the Department of Public Information.
- The country-level coordination of U.N. programs.
- The establishment of a centralized management and issues capability to handle matters that cross departmental lines.

This is a plan that indicates that the U.N. Secretary-General has heard, loud and clear, the message from member states and is now taking bold and effective action. It is a plan that encompasses many of the most important reforms the United States has advocated and worked for over the last three years. Thus, he has answered the call for leadership on reform and is prepared to exercise the powers of his office in an affirmative and appropriate manner.

We recognize that implementing some of these proposals will indeed meet resistance. It is my commitment to you today that we will spare no effort to ensure that the U.N. delivers on these reforms.

We are also very pleased that since his appointment, Mr. Annan has wielded his authority as Chief Administrative Officer to root out incompetence and inefficiency.

He has already cut several senior positions from his Executive Office. We were also impressed by the swift removal of inept officials at the Rwanda War Crimes Tribunal. We are pleased at his establishment of a policy coordination group—an idea we have strongly supported—to bring cohesion and authority to the decision-making process.

Mr. Chairman, this is a good start, and sets the kind of example he expects of the entire institution. But many of the broader structural and organizational reforms are beyond the authority of the Secretary-General. They must be negotiated with other member states as well as the governing councils of affiliated organizations. We are already working to eliminate outdated functions, consolidate duplicative and overlapping programs and ensure that goals and priorities that are clear and achievable are set across the organization.

This is why a fully functioning, strong and effective Office of Internal Oversight Services remains so vital and we have repeatedly indicated to the U.N. the importance of Inspector General Karl Paschke's work. We are very pleased that even within the budget cap, OIOS is being provided the resources necessary for full staffing and for its investigative, monitoring, and audit activities. We will maintain our strong efforts to ensure that the Office continues to be provided with a level of resources sufficient to allow the OIOS to fulfill its mandate effectively.

However, Mr. Chairman, based on my first four weeks in New York, I must tell you that the pace and scope of this kind of real progress towards reform will not continue without progress of our own towards paying our arrears. Our failure to pay is also impeding our efforts to achieve a more equitable and fair scale of assessment, a key part of our proposal to bring contributions from the CIO account down to \$900 million for fiscal year 1999, with no arrears at that level. It is also increasingly affecting every other interest we have at the U.N. and harming vital relationships that we have worked to build over many years with U.N. delegations, entities, and related groups.

Recently, I briefed U.N. delegates in New York on the Administration's proposal to schedule our arrears, reduce budgets, and achieve further U.N. reforms. The first reactions I got were blunt, and can be summarized this way: "Even if we give the United States all that it is seeking, why should we believe that it will honor its commitments, when it has not done so in the past?"

The question is a fair one. Our ability to get what we want at the U.N. is impaired because member states are not convinced that, in the end, even with reform, we will pay our share. I have explained to delegates that that is one reason why the President's budget calls for advance appropriations—so that member states will have some assurance that we really will make substantial payments toward our arrears as reforms are implemented. They also understand how our government works and they are well aware that it is Congress, not the Administration, who will provide the necessary appropriations. And they understand that reforms are essential.

The problems are particularly apparent as we work to adjust the scales under which countries are assessed for U.N. costs, including a reduction of the U.S. assessment rates for regular budget activities and peacekeeping. The Administration believes that the U.N. assessment system should reflect recent changes in the global economy and that the U.N. would function better with a broader base of shareholders who have a more significant financial stake in the international system.

But to achieve this, we need the approval of 184 other member states, many of whom would have to pay more if we pay less. Without the leverage of a credible U.S. commitment to pay our outstanding arrears, we have little chance of convincing them.

Other delegations have indicated to me that they understand, even if they do not yet accept, our requirements and they are willing to work with us. But they are firm in insisting that first, there be a credible commitment that the United States will honor its treaty obligations—to both pay arrears and meet our commitments in the future.

I hope that I can bring back to New York a message that, while reforms are being debated, while questions and concerns remain to be addressed, there is bipartisan support for the U.S. making a financial commitment in which U.N. members can place their confidence.

I can assure you that the willingness and commitment of the Chairman and other members of this Committee to become engaged in the reform and financial process at the U.N., has already played an important and positive role. The meetings that have already occurred between Members of the House and Senate and Secretary-General Annan and General Assembly President Razali were useful and productive. I hope that the dialogue that you have started will continue.

Mr. Chairman, President Clinton has made repaying our debt to the international organizations a foreign policy priority because the multi-lateral system, more than ever, makes an important difference on the vital issues that we care about. As you well know, our total contributions to international organizations amount to about one-tenth of one percent of the Federal budget—value for money made even more so as we proceed in the direction I have outlined today.

This is why we are committed to revitalizing the United Nations by reforming every aspect of its operation, paying what we owe and avoiding future debt—and guaranteeing a sustainable level for our contributions. I am looking forward to working with you to achieve these goals.

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#### BIOGRAPHICAL SKETCH OF AMBASSADOR BILL RICHARDSON

Bill Richardson was named United States Permanent Representative to the United Nations by President Bill Clinton on December 13, 1996. He is a member of the President's Cabinet and is also a member of the National Security Council. Ambassador Richardson was sworn in to office on February 13, 1997 by Vice President Gore.

Prior to becoming the U.S. Permanent Representative to the U.N., Bill Richardson served New Mexico's 3rd Congressional District—one of the largest and most ethnically diverse in the country—and was elected eight times. As a member of the United States Congress, Richardson held one of the highest ranking posts in the House Democratic Leadership. He was a member of the Resources Committee, the Commerce Committee, the Permanent Select Committee on Intelligence and the Helsinki Commission on Human Rights. During the 103rd Congress, he chaired the Subcommittee on Native American Affairs. He has been described as one of the most "prolific legislators in the House," with numerous bills and amendments enacted in the environment, energy, Indian, health, foreign policy and defense areas.

Admired for his work as President Clinton's special envoy on many sensitive diplomatic missions, Ambassador Richardson was nominated for the Nobel Peace Prize a second time in January, 1997. As a diplomatic "trouble shooter" he has worked to free hostages in several countries including Bangladesh, Burma, Iraq, and North Korea. Most recently Ambassador Richardson successfully secured the release of three Red Cross workers taken hostage in the Sudan. In 1996 he held a historic meeting with Cuba's Fidel Castro during which he successfully negotiated the release of three political prisoners and visas for their families. Ambassador Richardson has also chaired U.S. observer teams for elections in Guatemala, Nicaragua, and East Germany.

Ambassador Richardson received a B.A. (1970) from Tufts University and an M.A. (1971) from The Fletcher School of Law and Diplomacy.

Ambassador Richardson is fluent in Spanish, with good speaking and reading abilities in French.

Ambassador Richardson currently resides in New York with his wife Barbara.

#### U.N. CREDIT

Senator GREGG. Thank you, Mr. Ambassador. Following up on that point, and I do not expect to spend a lot of time on it, but I do have a couple of questions. You received a credit from the United Nations for an overpayment of \$27 million. Now, for some unknown reason, we have been hearing from the Secretary of State,

and when she was U.N. Ambassador we heard about the lack of leverage. We have heard from you about lack of leverage as a result of not paying our arrears. And yet, when the State Department got a \$27 million payment refund, it was applied to next year's obligations, instead of being applied to the arrearages; that makes no sense.

Are you going to adjust that, and go back and do what makes sense, which is to reduce the arrearages by \$27 million?

Ambassador RICHARDSON. Let me also mention that Assistant Secretary Princeton Lyman is here. His jurisdiction is all international organizations. He answered this question yesterday very effectively, I thought, in the House Appropriations Committee.

These are \$27 million that, as I understand it, we have said we may need to deal with in a new fashion. So is that OK, Mr. Chairman?

Mr. LYMAN. Senator, what we did, we applied that \$27 million against the assessments we have for this year, and, therefore, lowered the fiscal year 1998 request by \$27 million. We could have applied it to arrears. Then we would have had to increase our request to you this year by \$27 million.

Either way, the \$27 million would be credited to the United States. If the Congress prefers, we could go back and have that credited to the arrears, but then it would mean that we would have to increase the request for fiscal year 1998, because we just subtracted it from that.

Senator GREGG. Well, that makes sense, from our standpoint. Basically you have attempted to take the arrearages out of the budgeting process by advance funding them, which is, I think, a very big mistake and creates all sorts of budgetary problems for this committee.

So now by doing this, you've just aggravated the problem another \$27 million, in my opinion.

#### UNENCUMBERED BALANCES

How about the unencumbered balances?

Mr. LYMAN. The unencumbered balances, Senator, represent amounts against which all the billing has not come in. Therefore, we don't know how much of those balances would be needed for future billing. I mean, they are against peacekeeping operations, either still underway, or closed out, but all the bills haven't come in.

We expect, from the best estimates we have, that most of those unencumbered balances will be used for bills related to those operations. Once the billing is closed, then we can dispose of those unencumbered balances, but the amounts that are now in there don't represent a kind of cash surplus. They are against expected or anticipated billings.

Senator GREGG. Well, we do not have a number for what they stand at now in anticipation of billings. Do you have that number?

Mr. LYMAN. I know what the total of them are. They're in—off the top of my head, as I recall, it's about \$200 million. We expect most of that will go against billings.

But let me get you a more detailed list of that.

Senator GREGG. Yes; we would like a detailed list of what the unencumbered balances are by accounts, and then if you also can

give us what the anticipated billings are that you know are in the pipeline.

Mr. LYMAN. As much as we can, because some of it hasn't been calculated. But we will give you the best information we have at this time.

Senator GREGG. As you know, we are going to have this problem with finding approximately \$900 million. We are going to have to scour around, and certain accounts are going to be easier to scour in than other ones. It might make sense to use this money instead of trying to look for it somewhere else, and then come back and pay these bills in a future appropriations process. We have got to know what the numbers are before we can do that.

Mr. LYMAN. These funds have been set against very specific peacekeeping operations. But let me get you the specific information, Senator.

[The information follows:]

The following table lists the latest unencumbered balances (by U.N. peacekeeping operation) which have been obtained from the U.N. These amounts are overall figures from which the United States would be entitled to a 31 percent share (equal to the U.N. 31 percent rate of assessment) for peacekeeping. Future assessed charges are expected to use up all the unencumbered balances for all operations, except the completed operations in Mozambique and Haiti. When all assessed bills for these completed operations are paid, and if there is money left over, then the U.N. General Assembly may decide to return these amounts to the contributing member states.

#### FINANCIAL INFORMATION—U.N. PEACEKEEPING OPERATIONS

U.N. Force/Operation	Unencumbered balance <sup>1</sup>	Document date	U.N. document
UNDOF—Golan Heights .....	\$3,487,000	Feb. 21, 1997 ..	A/51/684/Add.1.
UNIFIL—Lebanon .....		Dec. 18, 1996 ..	A/51/535/add.2.
UNIKOM—Iraq/Kuwait .....	4,603,000	Nov. 6, 1996 ....	A/51/658/add.1.
UNAVEM—Angola .....	18,927,000	Jan. 30, 1997 ...	A/51/494/Add.3.
MINURSO—Western Sahara .....	19,393,000	Dec. 23, 1996 ..	A/51/763.
UNPF—Phasedown/closeout <sup>2</sup> .....	102,000,000	Dec. 2, 1996 ....	A/51/701/add.1.
UNMIBH—Bosnia-Herzegovina .....	6,517,000	Feb. 21, 1997 ..	A/51/519/Add.3.
UNTAES—Eastern Slavonia .....	18,820,000	Feb. 21, 1997 ..	A/51/520/add.2.
UNPREDEP—Former Yugoslavia Republic of Macedonia.	5,260,000	Mar. 5, 1997 ....	A/51/508/Add.2.
UNFICYP—Cyprus .....	385,000	Dec. 18, 1996 ..	A/51/755.
UNSMIH—Haiti Support Op .....	( <sup>3</sup> )		
UNOMIG—Georgia .....	1,056,000	Feb. 4, 1997 ....	A/51/793/Add.1.
UNAMIR—Rwanda .....	15,813,000	Jan. 31, 1997 ...	Secretariat Handout.
UNMOT—Tajikistan .....	2,860,000	Feb. 11, 1997 ..	A/51/784/Add.1.
UNOMIL—Liberia .....		Feb. 4, 1997 ....	A/51/756/Add.1
Total assessment offset .....	199,121,000		
ONUMOZ—Mozambique .....	19,052,000	Feb. 25, 1997 ..	A/51/807.
UNMIH—Haiti .....	7,023,000	Dec. 27, 1996 ..	A/51/764.
Total may be returned .....	26,075,000		

<sup>1</sup>Unencumbered and surplus balances are the net of assessments and other income less operating costs. Projected costs are used when available to provide more current estimates of balances. These balances are not equivalent to cash on hand which is the amount of assessments received less cash payments.

<sup>2</sup>Note that there is more than \$200 million in unassessed commitment authority for UNPF which would more than offset this unencumbered balance.

<sup>3</sup>No financial performance report as of this date.

SOURCE: Data provide by U.N. 4/25/97.

## INTERNATIONAL POLICE TASK FORCE

Senator GREGG. I have some other questions on the inspector general and also on the international organizations, but let me defer to Senator Hollings.

Senator HOLLINGS. Very good. I welcome the Ambassador. We were there in January 1995 when you were Ambassador to South Africa.

With respect to Secretary Cohen, who was just upstairs at a caucus that we had, he was talking about the commitment to withdraw from Bosnia, a firm commitment, starting with the drawdown beginning the first of the year.

He also alluded to the fact that while militarily we're quite resolved in doing it, in a commendable fashion, then money for the economic revival of the area had not come forth, and we were going to need a police force.

And he no way was going to allow his defense force to become a police force. Question: Does that then fall upon the United Nations? And is that, if it does fall upon it, Ambassador Richardson, is that in your request here now? Or what?

Ambassador RICHARDSON. Senator, what we're talking about here is what's called the IPTF. This is a police monitoring force. And we're talking as part of a recent—in northern Bosnia, the Brcko implementation. And what we want to make sure of is that our troops not be jeopardized.

We're talking about police monitors and human rights monitors. We're not talking about an extended operation. We're talking about just implementing this agreement that will bring some stability to that part of northern Bosnia.

And we're talking about a very limited operation.

Senator HOLLINGS. And that's included in the request here before the committee?

Ambassador RICHARDSON. Yes.

Senator HOLLINGS. Thank you, Mr. Chairman.

Senator GREGG. Senator Lautenberg.

## U.N. ARREARS

Senator LAUTENBERG. Thank you, Mr. Chairman. Congratulations, Mr. Ambassador. Our relationship has suddenly gotten formal. I used to like it when we were just plain old Bill and Frank. But I like seeing you in that job. I have a lot of confidence in you, having seen you on some of our Helsinki travels.

I think also it is fair to say that the U.N. functioning has, I think, become more respected here. Change is taking place. There are so many things going on around the world that I think we need help in picking up our responsibilities.

And I'm frankly distressed that we don't pay our bills. It's, to me, it's akin to citizens withholding their taxes because they want a change in the structure of Government. I've heard that appeal many times.

And I just think that if you're going to—to use a whimsical expression—you're going to belong to the club, you're going to have to pay the dues. Otherwise you have no voice.

And I hope that we will figure out a way, a bipartisan way, if that's possible, to get these arrearages up to snuff, or at least appropriate the money. I don't understand the delay in paying it if you owe it—especially from past obligations.

But I would hope that the United States can comport itself like the leading power in the world that we are, and not be deadbeats on bills that we owe. It does, as you said, Mr. Ambassador, reduce your leverage.

It's kind of a hollow thing when you owe money and you're continuing to order from the menu.

So we wish you luck, and I hope that we will be able to help restore some of the confidence that I think we should have.

Mr. Ambassador, you've got an abundance of problems to deal with in the United Nations. And it seems to me that again the obligation has expanded substantially.

#### ISRAELI HOUSING ISSUE

Did you say today there's going to be a National Security Council vote on the—

Ambassador RICHARDSON. Well, what's happened, Senator, is, as you recall, 2 weeks ago the United States vetoed a resolution on the Israeli housing issue, a resolution we thought would not be helpful.

Our view has been that in the Middle East process it's better to have the parties negotiate themselves rather than the National Security Council getting involved. We felt that the issue at hand is a final status negotiation that should happen at the end with the parties themselves.

This morning I had a meeting with the Arab Ambassadors, trying to persuade them not to offer a subsequent resolution that deals with the actual construction of the housing, which is taking place.

And my hope is that we can work this out, and not deal with another resolution. Because our view is that there is an impetus to peace—the President, in his meetings with Arafat and with King Hussein and with President Mubarak and Netanyahu—that the parties themselves are the best agents for that peace process, based on the Oslo accords, and based on the Camp David agreements, and the Madrid meetings and not to inject it within the National Security Council.

We talked about that this morning in the National Security Council, and I suspect, hopefully, a positive resolution of the issue, and that is, hopefully, not a resolution. Perhaps a Presidential statement.

We were concerned, as a matter of policy, with this construction. We let it be known to the Government of Israel. But we don't feel that the National Security Council is the place to achieve any positive results on the Middle East peace process.

Senator LAUTENBERG. I think that was an important veto, Mr. Ambassador, because it was followed on by the meeting in Gaza with people who are forced to take a side by their very presence there, including the United States. And I did object to the meeting.

And I'm not at all condoning Israel's actions in this case. I think it could have been handled a little more delicately, and a little

more correctly. That's the way I think that things ought to go on there—through face to face negotiations. There is no constructive value in bringing in other countries and excluding Israel to decide what's good. And the United States ought to, by virtue of our position, veto proposals that are determined by nonfriends of Israel as being the right way to go.

#### WAR CRIMES TRIBUNALS

I would just ask one other thing, Mr. Ambassador. Your predecessor was a strong supporter of U.N.-established and funded international criminal tribunal for former Yugoslavia. She was actively involved in securing the arrest and transfer of war criminals to the tribunal for prosecution.

We're not getting a lot of cooperation, as you know, from Croatia or Republika Srpska. Do you intend to continue an active role in that area?

Ambassador RICHARDSON. Senator, I commit to you a very strong, active role in that area. We are concerned about the lack of movement there. We are concerned with the implementation of that tribunal. We would like to see more speedy movement in the dealing with some of those criminals, and I commit to you a very vigorous effort on my part, hopefully, a trip there soon, where I can first hand get some impressions of how we can specifically move ahead.

But we are debating and reviewing this within the executive branch right now, how we can make this process work better.

Senator LAUTENBERG. We wish you luck, Mr. Ambassador, and I'm confident you're going to do the right job.

Ambassador RICHARDSON. Thank you, Senator.

Senator GREGG. The Senator from New Mexico.

#### DOD'S RESOURCES

Senator DOMENICI. Mr. Chairman, and Mr. Ambassador, I'm sorry I was late. I was at another meeting, and I hope I don't duplicate anything that was said.

Let me first, Mr. Ambassador, suggest, before we talk a little bit about U.N. arrearages and major reforms as you see them, let me suggest that I think everybody in positions like yours, not just the Defense Department, ought to know what a situation like Bosnia does to the United States military.

Because we did not have anything in reserve for these kinds of efforts, and because we didn't plan to have money there, \$2.8 billion has been spent out of this year's budget by the President on Bosnia that comes out of every day O&M, operations and maintenance and training money.

Before we're finished, it will be over \$6 billion, from what I understand. I think it's really important that we understand that that kind of commitment is not just a neutral event because it's a big, important event. We're in a very drastic situation right now.

If we don't have some reprogramming in the Defense Department and some rescissions, we've got a substantial portion of the training and operation and maintenance money of the U.S. military used up there. Because the President needed ready money, not budget authority, and so it comes out of the one-for-one ratio pro-

grams. That's almost all training and operation and maintenance and the like.

We don't have a place to just go pluck the money now. We have to go back through defense, and if it worked right, you're going to have to cut defense in a whole bunch of places to pay for this.

That will be a tough problem, because what we're going to have to do is probably take a lot of items that have long pay out in order to get some—because there's no other money that will do the job. We're going to have to cut some real dollars out in program authority to get this \$2 billion in outlays that has been spent.

So I only share that with you because frequently we make these commitments. You aren't part of this directly. I'm saying we should all know together, when we make these kinds of commitments that there ought to be some real effort to say how we're going to pay for it, rather than let it be done in the way that this one is happening.

I don't expect you to say anything or do anything. I just want to share that concern with you.

#### U.N. REFORMS

I understand we have a difference of opinion in the Senate versus the administration on how much arrearage we owe. I don't choose to argue the point, but I guess there is a bipartisan group working together up here and you're there, aren't you, Mr. Chairman.

Senator GREGG. Right. We're trying to work that out.

Senator DOMENICI. I believe that you know that there is a difference of opinion on whether we're going to put all that money in at one time, or whether we're going to pay it over time.

I think all of this comes about because—and I'm just giving you my version—because we don't want to reform entitlement programs and save real dollars, so we end up taking appropriated accounts. Everywhere we turn we have less and less money available.

That situation puts all these kinds of programs in jeopardy, including the budget for this subcommittee. Could you tell us, of the reforms that the United Nations is contemplating, what two or three are apt to save the most money over time?

Ambassador RICHARDSON. Senator, let me mention that there are two types of reform the United Nations is pushing, the ones that were announced by Secretary General Annan last Monday. These are reforms that Annan can do on his own as Secretary General. They involve Secretariat functions.

And the second set of reforms he is going to be pushing will be before the end of July, and these are reforms that he would have to submit to the General Assembly for approval, to all the member states—185 member states.

Princeton is our expert on what the most important ones are. My sense, Senator, is the most important ones are the reforms that consolidate the departments. The chairman is very interested in accounting issues. I think to consolidate is very important. There are a lot of departments at the United Nations.

Just one of his reforms was three separate development departments were merged into one. I would say the staff reduction of 1,000 people, which reduces the U.N. staffing by about 10 percent.

We're talking about a high several years ago of 11,200 employees. We're now down to about 9,000.

These are positions that he is going to try to eliminate altogether. It's not just vacancies that go unfilled. I think those two, in my judgment. I mentioned also a 13-percent reduction of administrative costs that will save about \$138,000.

Senator DOMENICI. Before Senator Hollings leaves—Senator Hollings, I would just want to remind everyone that it was in this subcommittee when you were chairman and I was your ranking member that we first indicated that we were not going to fund the United Nations any longer unless they had some bookkeeping, accounting, and efficiency reforms.

Senator HOLLINGS. You and I put \$1 billion there a couple of years ago.

Senator DOMENICI. That's right.

Senator HOLLINGS. And got them up to snuff, and we can see how our position on Boutros. But that's the whole point. Once we've won out and we've got a good Secretary General, we've got to be able to back our team up there and give them some credibility.

And I just don't know where the money is going to come from unless we get it out of the supplemental. This installment payment plan is not going to do right well, I think, at the United Nations.

Senator DOMENICI. Could we ask Mr. Lyman, the expert, if he has any thoughts?

Mr. LYMAN. Thank you, Senator. I would just add one point to what Ambassador Richardson said about steps that will save us money, and that's changing the scale of assessment. We are now assessed for the regular budget at 25 percent for almost all these organizations, and the United Nations assesses us at close to 31 percent for peacekeeping, because the permanent five members of the National Security Council have a surcharge for peacekeeping.

You know Congress has put that 25 percent cap on peacekeeping, but as long as the United Nations keeps billing us at 31 percent, the arrears build up.

This year, and this is the year we've got to do it, we're going to get the United Nations to agree—that's our objective—to lower that scale of assessment, across the board. Not only in the United Nations in New York, but also the U.N. specialized agencies.

If we do that, we bring down the U.S. costs of this whole structure, very close to the level that Congress in its wisdom gave us last year and the year before. Then there would be no arrears at that level, and that's our objective, and that saves the United States money.

Senator DOMENICI. Do you think you can do that?

Mr. LYMAN. I think if we give Ambassador Richardson here the backing and credibility he needs.

Ambassador RICHARDSON. If I get some bucks, Pete, I'll have the leverage to lower the scales, which would be by the end of this calendar year.

Senator DOMENICI. In other words, you would be saying, we're paying our dues, now we want you to bill us right.

Ambassador RICHARDSON. Right. Fairly.

Senator DOMENICI. I think that's it. I thank you very much.

## OFFSETS FOR ARREARS

Senator GREGG. I have a couple of other additional questions. First off, I think Senator Hollings' comment as he left is very pertinent, because he has been on this committee for a long time and he understands the dollars. I have been concerned about this. As you know, I have expressed it at every meeting that we have had.

I think what we need to get from you, working with OMB, is what the offsets are going to be. Where are you going to find the money? If this is so important that we pay these arrearages, then why didn't you want to put it all in this year, or at least a large part of it, in this year?

And, second, why did you use this budgeting gimmick of advance funding where there are no offsets? I think we have to get some specific offsets. I suggest that we get that pretty soon, because I think the effort to reach a good-faith agreement is going to depend on our knowing where this money is going to come from and how it's going to be paid.

We seem to have an awful lot of affiliated organizations. You are talking about consolidation. Something I would like to be able to get—and maybe we have this, but we do not have it effectively—is for the affiliated organizations which are clearly peripheral, things like the copper study group, the cotton group, the grain group, Institute of Unification of Private Law, the vine and wine group, the rubber group; you know what I'm talking about?

Ambassador RICHARDSON. Yes.

## WITHDRAWAL FROM ORGANIZATIONS

Senator GREGG. I'd like to get the number of people who work in these organizations; the number of people who contract out to work with them; what countries are their origins from; the number of employees; and where they have facilities.

We need to know what we are dealing with here, relative to bureaucracy. It seems to me that a lot of these are very marginal, and in need for support. If you're looking for a place to consolidate, that would be where to do it.

Now, relative to the inspector general, he's been limited by his resources and by his number of personnel. What do you expect to happen in that area?

Ambassador RICHARDSON. Senator, on your first point, just for the record, we did get out of three or those organizations. UNIDO being one—the U.N. Industrial Development Organization, we felt it was not appropriate to stay in. The Pan American Railway Congress Association and the World Tourism Organization.

We have targeted another one, the International Cotton Advisory Committee, but there was a little bit of concern in Congress, so we cut that back.

Senator GREGG. Well, target it again. You can put vine and wine, you can put copper, cotton, grain as far as I am concerned.

## OFFICE OF INTERNAL OVERSIGHT SERVICES

Ambassador RICHARDSON. We'll get that data for you. Let me also say that we attach great priority to this Office of Internal Oversight Services. We think it's very important.

We have worked with—and this is one of our major reform initiatives, when Princeton started in this job. And we're trying to get resources for this organization. We're actually advocating an increase in resources for it, because we think ultimately it will save money.

Senator GREGG. How much?

Ambassador RICHARDSON. Well, we're—

Mr. LYMAN. We're going to be filling seven new investigative positions this year. And they have come to an agreement that in the 1998–99 budget, the inspector general, Paschke, will have the resources he feels he needs to carry out investigations at his own initiative.

Senator GREGG. Is that the whole world of U.N. activity?

Ambassador RICHARDSON. No; just the Secretariat.

Mr. LYMAN. He only has authority through the Secretariat and some of the operational funds and programs that come under it. We have to work through the other specialized agencies to get the same kind of capacity built into them. We're making progress, but we're not there yet, and that's one of the things that's high on our list in these other specialized organizations.

But the inspector general doesn't have authority over them. They have their own governing councils, their own structures, and we have to work through them.

Ambassador RICHARDSON. We're trying to give his office—we pushed to give his office more independent authority, more teeth, more resources so that he can function like an inspector general in our departments. We haven't reached that.

But Mr. Paschke is a very committed manager and reformer.

Let me also mention, Mr. Chairman, that I'm trying to persuade you to come to New York to see first hand how this office operates, along with the Under Secretary for Management, Joseph Connor, who is a former Price Waterhouse chairman, who is involved with management. I think he's also a Republican. I'm not sure. I don't know if he's from New Hampshire.

But we have Maurice Strong, too, a very well known international expert on accounting. We have some very active people at the United Nations. that are part of the U.N. system. And I must say we have a very good team on our staff, headed by Victor Marrero, who is I think here, and at the State Department that are pushing reform.

Every day I give a speech on accountability and reform. You may find that difficult to believe, but I do. Within the U.N. system, we're pushing these issues very hard.

Senator GREGG. I congratulate you for that. We hope there will be results from the pushing, especially in expanding the inspector general's portfolio and his support, because we think it has been very limited.

Mr. LYMAN. I just want to mention that we welcome the GAO study that is beginning now, at the request of the Senate, on the functioning of the OIOS office, and giving us some guidelines as to how it should grow over the years. We'll be very interested in that study.

I gather we'll have the results sometime toward the end of the summer.

Senator GREGG. I know you have to get back to New York. We appreciate your taking the time out of your busy day.

Ambassador RICHARDSON. Thank you, Senator.

SUBCOMMITTEE RECESS

Senator GREGG. We look forward to working with you on these issues.

I ask unanimous consent that we be allowed to submit additional questions for the record.

The hearing is concluded.

[Whereupon, at 2:38 p.m., Thursday, March 20, the subcommittee was recessed, to reconvene subject to the call of the Chair.]



**DEPARTMENTS OF COMMERCE, JUSTICE, AND  
STATE, THE JUDICIARY, AND RELATED  
AGENCIES APPROPRIATIONS FOR FISCAL  
YEAR 1998**

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**THURSDAY, APRIL 10, 1997**

U.S. SENATE,  
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,  
*Washington, DC.*

The subcommittee met at 10 a.m., in room S-146, the Capitol,  
Hon. Judd Gregg (chairman) presiding.

Present: Senators Gregg, Domenici, Campbell, Hutchison, Hollings, and Mikulski.

**DEPARTMENT OF JUSTICE**

**FEDERAL BUREAU OF INVESTIGATION**

**STATEMENT OF LOUIS J. FREEH, DIRECTOR**

**IMMIGRATION AND NATURALIZATION SERVICE**

**STATEMENT OF DORIS MEISSNER, COMMISSIONER**

**DRUG ENFORCEMENT ADMINISTRATION**

**STATEMENT OF THOMAS A. CONSTANTINE, ADMINISTRATOR**

**OPENING REMARKS**

Senator GREGG. We will get started. We appreciate everybody being here early. That is great.

This is a hearing involving basically the core law enforcement community of the country; the Federal Bureau of Investigation, the Drug Enforcement Administration, and the Immigration and Naturalization Service. So we should all feel very safe, at least for the hour that we are here in the hearing.

We appreciate the Director's and the Commissioner's joining us this morning. We want to go over budgets. We decided to do this as a panel so that we could save you time and, hopefully, move the process along. I am going to pass on giving an opening statement also to move things along.

Senator HOLLINGS. Me, too.

Senator GREGG. Do you have any opening comments?

Senator CAMPBELL. Well, not to read an opening statement as much as thank you to all of these three agencies, Mr. Chairman, for a coordinated effort with the Denver police. It was very success-

ful. It culminated, after 5 months of intensive investigation, dealing with a drug project called the Crofton project, and resulted in, as I understand, 51 heroin dealers being collared and 66 others deported, and a number of cases are now in the process. The heads of these three agencies, of course, were a big help to help reduce the drug flow in our State, particularly in our major city, and I just want to thank them.

Senator GREGG. Why don't we start with you, Director? We will work our way right to left.

#### DIRECTOR FREEH'S OPENING STATEMENT

Mr. FREEH. Thank you, Mr. Chairman. Thank you very much. Members of the subcommittee, good morning. It is a pleasure to appear before you, particularly with my two friends and colleagues in the Department of Justice.

I have a somewhat lengthy prepared statement which I would submit for the record, with your permission, and perhaps in just a few minutes I will go over some of the highlights of our request, and then I will certainly be happy to answer your questions.

The FBI's 1998 budget request is for \$3 billion and 24,839 positions—including 10,524 agents. The budget proposes program increases of \$142 million and 522 positions.

As you know, since the hiring freeze was lifted at the FBI in July 1994, we have been hiring in the greatest burst of hiring in the history of our institution. Since the hiring freeze was lifted, we have hired about 6,020 individuals. Those are all employees who, of course, require drug screening, polygraph examinations, as well as the full background for a secret clearance because of our counter-intelligence responsibilities. We have hired 2,446 agents and 3,574 support personnel during that period.

Our hiring plan for 1997 is on track with respect to the agents; we expect to hire all 1,057. With respect to the support personnel, we expect to hire 2,607 for 1997. At this point, we are on track with respect to the hiring, including the 1,110 positions for our criminal justice information services [CJIS] facility in West Virginia. There is a possibility we will fall 200 or 300 short with respect to the support hiring, even though at this point we are on track and hopeful and confident to have them all on board. But it is a very, very busy time.

We certainly appreciate this subcommittee's support in that personnel infusion, which was desperately needed for us to maintain our mission and take care of new responsibilities.

#### TELECOMMUNICATIONS CARRIER COMPLIANCE

The 1998 budget can be broken down into seven initiative areas. The first area is the telecommunications carrier compliance request, which is for \$100 million. As I said, Mr. Chairman, last year, and as I certainly repeat this year, this is a critical part of our budget. It is really not simply an FBI item, although it is in the FBI budget. This is an initiative which we undertake on behalf of all law enforcement, including the agencies represented here, and, more important, the thousands of State and local departments who utilize court-authorized electronic surveillance and who would lose

its efficacy if the technology is not available to deal with the new digital telecommunications systems. So we ask for that for 1998.

This committee and the Congress created the telecommunications carrier compliance fund last year. I am also pleased to report that we have been able to get contributions from other agencies which will help defray the cost of retrofitting the embedded telecommunications base equipment. Administrator Constantine from the DEA has promised \$15 million; the U.S. Postal Inspection Service has given \$1 million; and the Department of the Treasury has promised \$1.8 million. The Attorney General and I are working very hard, particularly with the national security agencies, to make sure that they make some contributions, since a lot of the technology is directly related to the mission we perform for them.

#### TECHNOLOGY CRIMES INITIATIVE

The second area is the technology crimes initiative. We spoke a little bit about this at the hearing on Tuesday, which I was pleased to attend and which I again compliment you for holding, on child pornography on the Internet. As we said at that hearing, we are entering a new venue in terms of cybercrime and cyberspace, and the FBI agents of the 21st century who are now being hired, thanks to your resources. We will need the technology and the know-how to chase fugitives not only over back fences but through cyberspace. The computer crimes initiative, which includes the "Innocent Images" matter that we discussed on Tuesday, and the general trend for more and more crimes being committed on technologically difficult investigative areas is a big burden for us and a big challenge and one that we want to meet by being prepared now.

We have cases where people in St. Petersburg, Russia, break into Citibank accounts in New York City with a laptop computer and move millions of dollars out of the country before the bank even knows they are gone. We have other people using laptop computers who, from a foreign country, come into the United States without leaving their apartment and get into northern Florida and shut down 911 systems. These are systems which deliver not only police services, but emergency services.

Telecommunications fraud is a problem. If somebody wants to hire a murderer or engage in some crime, the Internet and the availability of technological means now makes that a very attractive area for criminals, not just child pornographers.

So our technology crimes initiative will help us get prepared for that. We have set up computer squads in three cities—New York, San Francisco, and Washington, DC. These are unique squads for the FBI. They do not have a particular programmatic assignment—bank robberies, mail fraud, et cetera. They are there to deal with crimes and assist agents in dealing with crimes in this new area.

We also have our Computer Investigations and Infrastructure Threat Assessment Center [CITAC] in Washington, DC, which will give us the technology and the training and the coordination to work those crimes. So it is a very important area, and I certainly appreciate your past support for that.

## INTERNATIONAL LAW ENFORCEMENT

The third initiative is international law enforcement. In the international law enforcement area, we are completing the 4-year joint FBI and Department of State plan which was submitted to and approved by the Congress last year. As I said last year the FBI's mission in the 21st century includes investigating counterterrorism, narcotics, and financial crimes that now span the globe. It is my very strongly held belief that we need agents in other countries to protect Americans, to have a perimeter of defense for Americans, and enable us to conduct investigations—not for other countries, but on behalf of the United States. And the plan that we are pursuing and the expansion of the legal attaché offices at really a very relatively modest investment will give the FBI and the United States the capability to investigate a crime scene in Saudi Arabia, as we did last summer, and to find a fugitive in Tanzania who is a member of a notorious D.C. drug gang, one of whose members was responsible for killing two of my FBI agents and a police sergeant in November 1994. We want these agents and resources overseas to protect Americans. We also get benefits in terms of liaison and training.

In the La Cosa Nostra initiative, we have asked for some additional resources to implement a 5-year counterorganized crime initiative, which has been very, very successful. Over the last 15 years, we have arrested and convicted 177 major organized crime bosses, under bosses, and consiglieres. The new strategy targets labor unions and particular industries where there has been increasing infiltration by organized crime interests, including the stock market. A recent arrest in New York showed that they were targeting stockbrokers as opposed to more traditional areas, and this is a very strong organization. There are over 2,000 La Cosa Nostra members still active. We have less than 12 percent of the membership and leadership convicted and under incarceration. The goal is to reduce the strength of the La Cosa Nostra over the next 5 years, and particularly to intervene in the industries where they are very active and where the costs of doing business will increase because of their power.

## SOUTHWEST BORDER INITIATIVE

The fifth initiative is the Southwest border initiative, which I share with my good friend, Tom Constantine. We have asked for some additional resources to deal with not only the drug trafficking, but also the public corruption which is involved in that regard. We have had some extremely successful initiatives there, including the *Zorro II* case. Our agencies are totally integrated—I emphasize totally integrated—with respect to that strategy, to include the leadership, the preparation, and the utilization of resources. It is a good example of how components not just in the Justice Department, but including the Customs Service, and particularly the INS, have put together a strategy that, at least on our side of the border, has become very, very important in our war against drugs.

## CONSTRUCTION

Another initiative is construction. We are asking for the last segment of funding for the construction for our new \$130 million FBI laboratory at Quantico. The amount we ask for in 1998 is \$32.6 million, which will complete the funding required.

The site preparation will begin in the fall. This will be a state-of-the-art teaching laboratory where, in addition to performing Federal and FBI forensic examinations, we will provide an enhanced capability to teach and share technologies with the State and local scientists. We are very proud of our FBI laboratory. It conducts over 600,000 examinations a year.

As I mentioned on Tuesday, one of those 600,000 matters was the palm print of Richard Allen Davis, which was taken from a wall and used to solve the Polly Klaas murder in Petaluma, CA. The laboratory does that on a routine basis every day.

We are certainly mindful of problems in our laboratory. The inspector general's report, I believe, is going to be issued next week. We will review that report, and we will take the criticism very seriously. We will make changes. We have already made changes to deal with some of those issues, but as I said, I am extremely proud of our laboratory and the work that it has done. I think the new facility at Quantico, which will be constructed with a view toward improving evidence maintenance as well as avoiding contamination problems, will really give us the facility that we need to do the job for the Government in the 21st century. The goal is to have it open and operating by the summer of 2000—which I guess is not that far away, but every time I say it, it seems like it is very far away.

## INFRASTRUCTURE INITIATIVE

The last two items, very briefly. The seventh of our initiatives is an infrastructure initiative. This includes security investigations of FBI and contract employees. As I said, we have hired over 6,000 people since July 1994. They all have secret clearances. It is the best time in terms of the employment process to determine problems, to identify people who are not suitable not only for Government work but for work requiring a secret clearance. We are asking to hire what we call background investigation contract service [BICS] investigators or former Federal investigators to conduct these background investigations. They do it at one-half the cost of a current on-board agent. They also free up our agents to do investigations which do not necessarily relate to backgrounds.

Part of the infrastructure initiative is the national backstopping program. That is the means we use to protect our undercover agents and put together for them credible and protective backgrounds so when the bad guys check them out, they are able to survive and perform their very dangerous missions.

We have asked for replacement of microwave radio equipment as the Government auctions off megahertz of radio spectrum, without any reimbursement to the Federal agencies. We require funding to relocate and replace microwave equipment so we can continue the radio communications vital to operations despite the shrinking spectrum allocation.

The other aspect is some additional funds to comply with the electronic Freedom of Information Act [FOIA] which the Congress now, I think very wisely, has put in place. It will give us the ability to respond to FOIA requests quicker. We have a very large backlog in the FBI which we are trying to deal with, and this will require us to move quicker, and we would like some additional resources to respond to that.

#### PREPARED STATEMENT

Those are the highlights in seven different initiatives of our overall budget. I just want to say again how appreciative I am personally, and the FBI is institutionally to you, Mr. Chairman, Senator Hollings, and other members of the subcommittee, for what has been extraordinary support over several years. Our budget has grown very, very significantly, certainly in the almost 4 years that I have been Director. We have used that money prudently and wisely and we will endeavor to complete all of our assignments and use that money with the very clear understanding of the difficulty that it takes to appropriate those funds and give them to us. And we are very appreciative of your support.

Thank you.

Senator GREGG. Thank you, Director.

[The statement follows:]

#### PREPARED STATEMENT OF LOUIS J. FREEH

Good morning, Mr. Chairman and members of the subcommittee. I welcome this opportunity to appear before you today and discuss the 1998 budget request for the FBI.

At the outset, I would like to thank both Chairman Gregg and Senator Hollings for their continued strong support of the FBI during the 1997 budget process.

The additional resources you provided for the FBI are being used to protect the nation and its citizens against the threat of terrorism, to keep international crime away from the borders of the United States through expansion of our legal attaché offices, and to attack drug trafficking and public corruption along the Southwest border.

I am grateful for your efforts to fund the telecommunications carrier compliance initiative, which was my top budget priority for 1997, and for your continuing support for the construction of our new laboratory facility. Both of these initiatives will provide immeasurable benefits to our state and local law enforcement partners.

#### 1998 BUDGET REQUEST

For 1998, the FBI is requesting \$3 billion in direct budget authority, 24,839 permanent positions—including 10,524 agents—and 23,770 direct funded workyears. This amount represents a net increase of \$204.3 million from the 1997 enacted levels.

To build upon the work started with the 1997 budget, as well as to address new and increasing investigative responsibilities and provide necessary infrastructure services, the 1998 budget proposes direct program increases totaling \$142.1 million and 522 permanent positions, of which 161 are agents.

This is a relatively modest increase in new positions that will allow us to enhance our efforts in some of our highest priorities, including computer crimes, La Cosa Nostra, and Southwest border. This level of new hiring will also allow us to begin providing specialized training of new agents that were brought on board during 1995, 1996, and 1997, as well as other agents for which such training was deferred due to new agent hiring and training requirements.

#### 1998 INITIATIVES

The 1998 budget proposes increases that support seven initiatives, including: telecommunications carrier compliance, technology crimes, international law enforcement, La Cosa Nostra, Southwest border, infrastructure, and construction.

## TELECOMMUNICATIONS CARRIER COMPLIANCE

For 1998, we are asking for a total of \$100 million for telecommunications carrier compliance activities to support the Communications Assistance for Law Enforcement Act (CALEA). Through this initiative, we are working to preserve the ability of law enforcement to conduct court-authorized wire-taps, pen registers, and trap-traces. These capabilities are critical to all law enforcement, not just the FBI.

Forty-one states, the District of Columbia, the U.S. Virgin Islands, and Puerto Rico have laws allowing for court-authorized interception of communications by state and local law enforcement. In 1995, state and local law enforcement accounted for 44 percent of the applications for wiretaps in criminal cases.

The loss of these capabilities would be especially devastating to the nation's efforts to combat drug trafficking. Approximately 69 percent of the criminal applications for wiretaps in 1995 were for narcotics investigations.

These techniques are equally important to protecting the nation's security. Over the past ten years, 59 percent of all federal wiretap applications were in support of national security investigations.

In many cases, there is no substitute for the use of court-authorized electronic surveillance in gathering evidence, preventing crimes, protecting victims, and in bringing to justice the persons engaged in violent crimes, terrorism, drug trafficking, and espionage.

The CALEA implementation plan, which was requested in the 1997 conference report, was recently provided to each member of the Committees on Appropriation and Judiciary in both the House and Senate. We await your approval of the plan so that we may begin entering into cooperative agreements with industry and obligate the funding you provided for this important initiative.

This past January, the FBI issued the second notice of capacity requirements. We are now in the process of reviewing comments from industry and the public. We are now preparing to publish final cost recovery rules for the telecommunications carriers that establish the procedures for the cooperative agreements that will be used to provide reimbursements for costs incurred by carriers in complying with CALEA. We continue to be fully engaged with industry in developing necessary standards that will guide CALEA compliance efforts. Finally, we are also working with other federal agencies to identify eligible funding for transfer to the telecommunications carrier compliance fund that you authorized in the 1997 Omnibus Appropriations Act.

This past November, the Attorney General sent a letter to all eligible agencies advising them of the fund and asking their support by transferring available funding. The FBI has received firm commitments from several agencies, including the United States Postal Inspection Service, the Drug Enforcement Administration, and the Department of the Treasury for the United States Customs Service and United States Secret Service. These commitments total \$17.8 million. I am hopeful that other agencies will also be able to make additional funding available this year.

I believe we have made much progress over the past year in working with industry, the Congress, and other interested groups. Now is the time to begin the process of actually implementing the solutions envisioned by Congress when it passed CALEA. All of us here recognize the consequences if law enforcement loses its ability to effectively conduct court-authorized electronic surveillance.

## TECHNOLOGY CRIMES

The 1998 budget also proposes additional agents and funding to enhance our capabilities to address a growing workload in the area of computer-related crime, ranging from criminal attacks to acts designed to disrupt or disable the national information infrastructure. We currently have three computer crime squads located in San Francisco, New York City, and Washington, D.C. The additional agents requested will allow us to establish teams in other key field offices so that there is a core capability for investigating computer-related crimes across the nation.

Assisting our field computer crime agents is the Computer Investigation and Infrastructure Threat Assessment Center (CITAC). This center, which operates at FBI headquarters, was among the counterterrorism capabilities supported by the committee in 1997.

As you know, going after the type of criminals, terrorists, and others involved in cyber-crime often requires very specialized and technically trained investigators and support staff. We are supplementing our staff with contract telecommunications and computer science experts. This is a very dynamic area, where the potential threats are broad and challenging. CITAC will provide the FBI with a much needed resource for countering these threats. Funding requested in our 1998 budget will support ongoing CITAC operations and efforts.

## INTERNATIONAL LAW ENFORCEMENT

Last year, Congress approved the FBI's four-year plan to increase our presence overseas as part of our efforts to prevent foreign crime and terrorism from reaching the United States. In 1997, we are proceeding with the opening of new FBI legal attaché offices in Estonia, Saudi Arabia, the Ukraine, Poland, India, and South Africa. I am pleased to report that legal attaché offices will be operational in all of these locations this year. At present, we have agents in every location except New Delhi and Pretoria, which will open later this spring.

Funding is requested in 1998 to implement the third year of this plan by opening eight new legal attaché offices in Brazil, the Czech Republic, Denmark, Kazakhstan, Turkey, South Korea, Nigeria, and Uzbekistan. We are also planning to assign additional staff to eight existing locations.

I recently visited several Middle Eastern countries, including Egypt, Israel, and Jordan, where I had the opportunity to talk with foreign government leaders and law enforcement officials. These leaders and officials were very pleased that Congress was supporting our plan for new FBI overseas offices. They remain enthusiastic and committed toward building the "cop-to-cop" relationships that are possible through our legal attaché program. With your support in 1998, we can improve our ability to protect American cities and communities against the impact of international crime.

## LA COSA NOSTRA

The La Cosa Nostra remains the most powerful and dangerous, organized criminal threat to American society. Our investigative and intelligence information indicates that La Cosa Nostra families that were previously damaged by prior FBI and other law enforcement investigations and prosecutions are attempting to rebuild their criminal enterprises.

Last year, the FBI began implementation of a strategic plan, named "Operation Heaven's Gate," that is focused on reducing the influence of the La Cosa Nostra over labor unions and certain industries, as well as toward reducing the members of all La Cosa Nostra families. The 1998 budget includes additional agents and funding to support our efforts to achieve these objectives.

To illustrate the success that exemplifies the "Operation Heaven's Gate" strategy, this past December, FBI agents in Fort Lauderdale arrested Nicky Corozzo and eight others following their indictment for conspiracy to murder the FBI's cooperating witness and other charges. At the time of his arrest, Corozzo was alleged to have been one of the three-man ruling commission for the Gambino family in New York City due to the conviction of John Gotti. These arrests came after a two-year investigation of loansharking, credit card fraud, trafficking in untaxed cigarettes, and other criminal activities.

In June 1996, the acting boss and 18 other members and associates of the Genovese family in New York City were indicted on racketeering charges. The indictment also seeks the forfeiture of numerous assets, including \$20 million that represents the proceeds of the charged acts of racketeering.

I mention these cases because our investigative successes were achieved, in large part, by using some of the most important tools available to attack organized crime, namely, cooperating witnesses willing to provide us information, undercover operations that get us inside these close-knit groups, and court-authorized electronic surveillance to collect evidence of criminal wrong-doing. Funding is requested in our 1998 budget to strengthen our capabilities to support undercover operations and to provide the necessary and adequate safeguards to the brave agents who undertake those types of dangerous roles in an effort to make our communities safer.

## SOUTHWEST BORDER

The Southwest border project is a joint FBI, DEA, and United States attorney initiative targeting the activities of four major Mexican drug trafficking organizations operating along the United States and Mexican border. This past January, one of the targets of this investigation, Juan Garcia Abrego, was sentenced in federal court to 11 life terms and fined more than \$128 million after being found guilty of various drug-related offenses. While the conviction and sentencing of Garcia Abrego sends a strong message to other Mexican drug traffickers, we still have much unfinished business.

Through the joint Southwest border project, we are pursuing a comprehensive effort against drug trafficking by the major Mexican drug organizations. Additionally, we are also focusing on violent crimes that are being committed to support these drug trafficking activities and the corruption of government officials, including law

enforcement, that allows drug traffickers to operate without fear of detection, arrest, and prosecution.

Last year, you provided the FBI with 70 new agents for the Southwest border project. Our 1998 budget proposes another 70 agents to build upon the work already started and to expand our focus to second-tier drug traffickers.

#### CONSTRUCTION

Overall, the FBI is proposing \$49 million in 1998 for construction projects. This request includes \$32.6 million to complete the funding requirements of the new FBI laboratory facility, which is projected to cost approximately \$130 million. We have selected a design concept for the new facility that was developed by our architectural and engineering firm. We expect to break ground later this summer. Our goal is to have the new FBI laboratory ready for operation by the summer of 2000.

Construction of this new state-of-the-art facility will significantly improve the operations of the FBI laboratory and the quality of forensic services the FBI provides to the entire law enforcement community.

Additionally, construction funds are proposed to begin the renovation of space in the FBI headquarters building that is being vacated by the relocation of fingerprint identification and related operations to West Virginia, to expand and realign space for the FBI field office in Los Angeles, California; and to continue necessary upgrades and maintenance at the FBI Academy complex in Quantico, Virginia.

#### INFRASTRUCTURE

Within our infrastructure initiative, funding is being proposed for several important projects, including: security reinvestigations of FBI employees and contract personnel; the national backstopping program that supports undercover operations; the replacement of microwave radio equipment that must be changed due to the loss of spectrum assignments; and achieving compliance with the recently enacted Electronic Freedom of Information Act.

#### FREEDOM OF INFORMATION ACT

The FBI faces a backlog of approximately 16,000 Freedom of Information and Privacy Act (FOIPA) requests. Congress provided 129 new positions in 1997 to help us reduce this backlog. We are well on the way to filling these positions and I am confident we will have all of these employees on board by the end of this year. All 129 positions will be line employees dedicated to reducing the backlog.

Additionally, with your concurrence, I moved responsibility for management of our FOIPA program to our Office of Public and Congressional Affairs. I did this to increase management oversight over the process. Since that move became effective in late October, a number of streamlining initiatives have been undertaken and the work flow process is being redesigned. Our goal, which is optimistic but achievable, is a 40 percent improvement in processing productivity by the end of fiscal year 1998.

Last year, Congress enacted the Electronic Freedom of Information Act. This act requires government agencies to provide public information to requesters in an electronic format, such as computer diskettes or compact disks, and places other requirements on government agencies. A new pilot automation project has proven the viability of producing the records in an electronic format.

To comply with the new law, the 1998 budget requests both additional staffing and funding to implement an automated document processing system that can produce FOIPA releases in an electronic format. The additional positions and funding for automated document processing, coupled with the other numerous initiatives, will permit us to reverse the current trend and come into compliance with the law. Without the additional staff and funding, we cannot meet the mandates of the law.

#### CONCLUSION

Mr. Chairman, I would like to again express my gratitude for the committee's support and confidence in the FBI. I am hopeful that we can continue to build upon our successes and serve the American people proudly and effectively. As tough as our job is, I know that it would be that much harder were it not for the willingness of the committee to support us with the resources needed to meet our investigative, national security, and law enforcement service responsibilities.

This concludes my opening remarks. I would like to respond to any questions that you may have.

Senator GREGG. Administrator.

Mr. CONSTANTINE. Senator, like the Director, I have a lengthy statement to file.

Senator GREGG. We will put all statements in the record.

#### ADMINISTRATOR CONSTANTINE'S OPENING STATEMENT

Mr. CONSTANTINE. OK. Thank you. I want to thank you, Senator Hollings, and the other members of the subcommittee for your support on behalf of all DEA agents around the world who know that your support has gone past mere words. There has been substantial financial support for DEA programs, and it has been very much appreciated.

Our budget for fiscal year 1998 is focused on three primary operational issues that really reflect the impact of drug trafficking in the United States and addresses it through law enforcement programs.

#### INTERNATIONAL ORGANIZED CRIME

The first is the substantial international organized crime syndicates that control and direct virtually all of the major narcotics trafficking within the United States.

Cocaine and heroin are not grown in the United States. They are not manufactured in the United States. Both are manufactured and grown outside of the United States, and the importation of those drugs and the management of the distribution in the United States is not controlled, for the most part, by citizens of the United States, but by the leadership of powerful organized crime syndicates the likes of which I have never seen before in my law enforcement career. And I think as the Director mentioned, the efforts that we have made over the last 30 years on the LCN groups have been substantial. It has been proven that we can make an impact on organized crime.

What we have done in the area of narcotics trafficking is take the same model that has been so successful against organized crime. The most substantial program in our budget request for this year is labeled the Southwest border strategy. I suspect that if I were going to define that operation today, I would not call it the Southwest border strategy. As we started with it, we recognized that about two-thirds to three-quarters of all of the narcotics entering the country was coming across the Southwest border. Drug trafficking was originally controlled by organized crime syndicates out of Colombia who had asked organized transportation groups out of Mexico to merely smuggle cocaine across the border and then turn it back over to Colombian organizations. Those organizations have their branch offices in New York, Chicago, Detroit, Los Angeles, and Houston.

Over the last 3 or 4 years, the situation has changed fairly dramatically, especially with the leaders of the groups from Cali, Colombia, having been arrested. More and more we see the powerful syndicates being controlled out of the families in Mexico.

The Southwest border strategy is, in reality, all of those investigations, which for the most part are jointly conducted between the FBI and DEA. These are major technology-driven investigations, which are joined later by Immigration, Customs, and the Criminal Division of the Justice Department. We have been able to

identify to a major degree the leadership in the United States and the command and control individuals who reside outside of the United States.

We have to recognize that these groups we are investigating and attempting to arrest and prosecute make a profit somewhere between \$7 to \$10 billion a year, tax free, and they have hired the best technical experts. They have intelligence systems or counter-intelligence systems that certainly surpass anything in domestic law enforcement outside of the Federal agencies, and in many ways would rival that of a second-level country. And they continue to build these defense systems.

The DEA has asked for 96 agents and a substantial number of intelligence analysts for the Southwest border strategy. We are also requesting technology infrastructure support for DEA.

#### NATIONAL DRUG TRAFFICKING PROBLEMS

The second area is what we call national drug trafficking problems. Recognizing that the management of many of these organizations at the higher level still comes from Colombia and Mexico, there are two primary drug problems. For some strange reason, they are divided geographically. The first in the West and the Southwest, and beginning in the Southeast now, is methamphetamine, a drug formerly controlled by motorcycle gangs with a very limited usage. That changed dramatically in the early 1990's. It has become the drug of choice in California, the No. 1 drug of addiction. And for the first time in the history of us recording drug-trafficking issues, we find that the addiction in the female population exceeds the addiction in the male population. We also have a tripling of hospital emergency incidents and a doubling of overdose death rates. Also what we have is, because of the impact of this drug on individual long-term usage, we have this delusional, paranoid state that many addicts wind up in, and they become very dangerous——

Senator MIKULSKI. What is this drug?

Mr. CONSTANTINE. Methamphetamine. It is a chemical compound out of the precursor drug ephedrine or, increasingly, pseudo-ephedrine. It is a drug similar to crack cocaine but its effect is longer in duration. When police officers try to make arrests, or in domestic violence situations, methamphetamine produces violence and is a danger to the victims as well as police officers. I think as Senator DeConcini knows, the troopers from the New Mexico State Police chased somebody from Albuquerque to Sante Fe——

Senator MIKULSKI. Domenici.

Mr. CONSTANTINE. I am sorry.

Senator MIKULSKI. They all want to be Ambassadors. [Laughter.]

Mr. CONSTANTINE. I had gotten a call yesterday from Senator DeConcini, and that is how I kind of lost that.

Senator GREGG. That is OK. He always calls me Senator Judd. [Laughter.]

Senator DOMENICI. I used to. I don't anymore.

Mr. CONSTANTINE. There had been a high-speed pursuit by the police department out there in which the defendant eventually decapitated his own son under the influence of this drug. Meth is controlled to a large degree by organized crime groups out of Mexico,

but they turn it over to groups in the United States for street-level distribution.

The second drug problem is heroin, which has always been a problem in the United States dating back to the 1920's and 1930's. Within the past 4 or 5 years heroin that used to come from Southeast Asia and Southwest Asia, now for the first time comes from South America, specifically Colombia. And heroin that used to be 7 percent pure is now 90 percent pure, and we are seeing increasing addiction rates. It is primarily a major drug problem on the east coast of the United States, and, Senator Mikulski, unfortunately, Baltimore is one of the leading per capita heroin addiction cities in the United States today. Today's heroin is controlled by Colombians, and it is sold to illegal aliens from the Dominican Republic who control the distribution up and down the United States.

Our budget request includes a major enhancement for methamphetamine enforcement programs and also for heroin enforcement programs. Recently, we conducted hearings with Congressman McCollum in the Caribbean, the Director and I, along with the Coast Guard and Customs. In addition to our problem on the Southwest border, increasingly we have this problem in the Caribbean region. The traffickers seem to float their distribution systems back and forth between the Southwest border and the Caribbean. Both the Lesser and the Greater Antilles Islands are being used as major embarkation points for the drugs into the United States.

#### INFRASTRUCTURE

The other major increases are in the area of infrastructure. The DEA, like every enforcement agency, when times were tough with money, our philosophy, right or wrong, was the agents were our first priority. We did that often at the cost of our own infrastructure needs. The Attorney General has been very emphatic to myself, the Director, and the Commissioner, that we rebuild this infrastructure which is so important in the out-years.

#### PREPARED STATEMENT

That is the nonagent, nonpersonnel component of our budget request, and I will be glad to answer any questions. I appreciate your support.

Senator GREGG. Thank you.

[The statement follows:]

#### PREPARED STATEMENT OF THOMAS A. CONSTANTINE

Mr. Chairman, Members of the Subcommittee: It is a pleasure and a privilege to appear before you today to discuss details of the fiscal year 1998 budget for the Drug Enforcement Administration. Before that discussion, however, it is important to assess the current drug situation and discuss several lessons we have learned over the past several years, lessons which are shaping our current approach to drug law enforcement at home and overseas.

But first, I would like to take a few moments to express our deep appreciation to you, Chairman Gregg and Senator Hollings, and to the other members of the Subcommittee for the extremely generous support DEA received in our fiscal year 1997 budget. Your advocacy for our budget resulted in the first billion dollar budget for DEA and provided us with 261 additional new Special Agents to work in American communities and overseas in areas where the world's most sophisticated drug traffickers are headquartered. Additionally, you provided us with funding to build the Justice Training Center at the FBI Academy at Quantico, which will give DEA the

space necessary to train Special Agents, state and local partners, and international drug law enforcement officials. This center is more than just a building to DEA: it is a testament to the professionalism and creativity of DEA's Special Agents and is a tangible symbol of your support for our mission. On behalf of the men and women of the Drug Enforcement Administration, you have our sincere gratitude.

During today's hearing, I would like to provide you and the Members of the Subcommittee with a picture of how today's international organized crime syndicates operate, how they rely on national drug trafficking organizations within the United States to carry out their business, and how violent trafficking groups have transformed many of our communities into virtual war zones. I will also discuss how the Drug Enforcement Administration is working around the world to target and build cases against the world's most notorious drug traffickers, focusing attention on the major traffickers operating along the Southwest Border of the United States.

#### INTERNATIONAL ORGANIZED CRIME

Powerful international drug syndicates continue to operate around the world, supplying drugs to American communities, and employing thousands of individuals to transport and distribute drugs. The most significant international drug syndicates operating today are far more powerful and violent than any organized crime groups we have ever seen before. Frequently, these organized crime groups are referred to as "cartels" or "federations"—titles that do not capture the full range of their criminal activities, and give these vicious drug traffickers a veil of respectability.

Today's leaders of major international organized crime syndicates trafficking in narcotics are simply the 1990's versions of mob leaders U.S. law enforcement officials have fought since the beginning of this century. However, there are stark differences between major international groups and their domestic counterparts. Members of international groups in Colombia and Mexico, have at their disposal, sophisticated technology—encrypted phones, faxes, and other communications equipment—that even the best law enforcement departments in the U.S. do not have access to. Additionally, they have in their arsenal, aircraft, radars, weapons and an army of workers who oversee the drug business from its raw beginnings in South American jungles to the urban jungles within the United States. Mob leaders operating in places like New York, Chicago or Las Vegas called their business shots on American soil; major traffickers from Colombia and Mexico make decisions from the safety of their headquarters in Cali or Guadalajara. Law enforcement officers in the U.S. were eventually able to identify, target, arrest and prosecute mob bosses, and today, organized crime in America is a shadow of what it once was. The new international drug syndicate leaders, in some countries, are virtually untouchable because their operations are headquartered in foreign countries and the likelihood that these leaders will ever face justice in their countries, or in the United States, is remote.

With the intense law enforcement pressure focused on the Cali leadership by brave men and women in the Colombian National Police during 1995 and 1996, all of the top leadership of the Cali syndicate are either in jail, or dead. The fine work done by General Serrano, and other CNP officers, is a testament to the commitment and dedication of Colombia's law enforcement officials in the face of great personal danger, and a government whose leadership is riddled with drug corruption.

Since the Cali leaders' imprisonment, on sentences which were ridiculously short and not nearly commensurate with the seriousness of their crimes, traffickers from Mexico have taken on greater prominence. The alliance between the Colombian traffickers and the organizations from Mexico had benefits for both sides. Traditionally, the traffickers from Mexico were involved in smuggling marijuana, heroin and cocaine into the United States, and had established solid distribution routes throughout the nation. Because the Cali syndicate was concerned about the security of their loads, they brokered a commercial deal with the traffickers from Mexico, which reduced their potential losses.

This agreement entailed the Colombians moving cocaine from the Andean region to the Mexican organizations, who then assumed the responsibility of delivering the cocaine into the United States. In 1989, U.S. law enforcement officials seized 21 metric tons of cocaine in Sylmar, California; this record seizure demonstrated the extent and magnitude of the Mexican groups' capabilities to transport Colombian-produced cocaine into the United States. This huge shipment was driven across the Mexican/U.S. border in small shipments and stored in the warehouse until all transportation fees had been paid by the Cali and Medellin cartels, to the transporters from Mexico. Now, trafficking groups from Mexico are routinely paid in multi-ton quantities of cocaine, making them formidable cocaine traffickers in their own right.

The majority of cocaine entering the United States continues to come from Colombia through Mexico and across U.S. border points of entry. Most of the cocaine enters the United States in privately owned vehicles and commercial trucks. There is new evidence that indicates traffickers in Mexico have gone directly to sources of cocaine in Bolivia and Peru in order to circumvent Colombian middlemen. In addition to the inexhaustible supply of cocaine entering the U.S., trafficking organizations from Mexico are responsible for producing and trafficking thousands of pounds of methamphetamine, and have been major distributors of heroin and marijuana in the U.S. since the 1970's.

In addition to the sophisticated groups operating in Mexico and Colombia, there are numerous international drug trafficking organizations headquartered in Southeast and Southwest Asia. With the vast quantities of opium production in these regions of the world, and with the relative isolation of countries like Burma and Afghanistan, heroin trafficking flourishes. The influence and power of heroin traffickers such as Khun Sa, the world's most notorious heroin trafficker, are unparalleled.

In 1994, DEA Bangkok and the Royal Thai Police initiated Operation Tiger Trap, which was an operation designed to disrupt the heroin trafficking capability of the Shan United Army (SUA). The objectives of the operation were to disrupt and immobilize the SUA infrastructure in Thailand and to arrest and extradite members of the organization under indictment in the U.S. Tiger Trap primarily targeted the heroin traffickers on the production and wholesale levels. To date, 15 targets of Operation Tiger Trap have been arrested.

As a result of Tiger Trap and other influences, in 1995, the SUA, formerly the principal producer of Southeast Asian heroin, experienced a number of setbacks. Its northern bases were attacked by the Burma Army and United Wa State Army (UWSA). Thailand restricted the flow of supplies to the SUA by maintaining a closed border policy with Burma's Shan State that began in 1994. Months of secret negotiations between the Government of Burma and the SUA, resulted in Burma Army troops peacefully occupying the Ho Mong headquarters of the SUA on January 1, 1996.

Khun Sa, surrendered to Burmese authorities. These arrest of key members of his trafficking organizations denied Kuhn Sa the ability to market his heroin and collect monies owed from prior transactions. Many of the other SUA troops surrendered. Nevertheless, heroin production has continued, albeit at reduced levels, in the Shan-controlled areas. Law enforcement action further weakened the Shan marketing infrastructure in Thailand.

While Asian heroin trafficking organizations are a formidable force in international narcotics trafficking, the proximity of trafficking groups from Mexico and Colombia pose the greatest, most immediate threat, to both the national security of the United States and the quality of life in many American communities.

#### TRAFFICKING ORGANIZATIONS FROM MEXICO

A number of major trafficking organizations represent the highest echelons of organized crime in Mexico. Their leaders are under indictment in the United States on numerous charges. The Department of Justice has submitted provisional warrants, to Government of Mexico, for many of their arrests and only one, Juan Garcia Abrego, because he was a U.S. citizen, has been sent to the U.S. to face justice. The other leaders are living freely in Mexico, and have so far escaped apprehension by Mexican law enforcement.

The most powerful drug trafficker in Mexico at the current time is Amado Carrillo-Fuentes, who, as recently reported, allegedly has ties to the former Commissioner of the INCD, Gutierrez-Rebollo. His organized crime group, based in Juarez, is associated with the Rodriguez-Orejuela organization and the Ochoa brothers, from Medellin, as well. This organization, which is also involved in heroin and marijuana trafficking, handles large cocaine shipments from Colombia. Their regional bases in Guadalajara, Hermosillo and Torreon serve as storage locations where later, the drugs are moved closer to the border for eventual shipment into the United States. The scope of the Carrillo-Fuentes' network is staggering; he reportedly forwards \$20 to \$30 million to Colombia for each major operation, and his illegal activities generate ten's of millions per week. He was a pioneer in the use of large aircraft to transport cocaine from Colombia to Mexico and became known as "Lord of the Skies." Carrillo-Fuentes reportedly owns a fleet of aircraft and has major real estate holdings.

Miguel Caro-Quintero's organization is based in Sonora, Mexico and focuses its attention on trafficking cocaine and marijuana. His brother, Rafael, is in prison in Mexico for his role in killing DEA Special Agent Kiki Camarena in 1985. Miguel, along with two of his other brothers—Jorge and Genaro—run the organization.

Miguel himself was arrested in 1992, and the USG and GOM cooperated in a bilateral prosecution. Unfortunately, that effort was thwarted when Miguel was able to use a combination of threats and bribes to have his charges dismissed by a federal judge in Hermosillo. He has operated freely since that time.

The Caro-Quintero organization specializes primarily in the cultivation, production and distribution of marijuana, a major cash-crop for drug groups from Mexico. The organization is believed to own many ranches in the northern border state of Sonora, where drugs are stored, and from which drug operations into the United States are staged. Despite its specialization in marijuana cultivation and distribution, like the other major drug organizations in Mexico, this group is polydrug in nature, also transporting and distributing cocaine and methamphetamine. Miguel Caro-Quintero is the subject of several indictments in the United States and is currently the subject of provisional arrest warrants issued by the United States Government. In an act of astonishing arrogance, he called a radio station in Hermosillo, Mexico last May stating that he was bothered by statements I had made, and indicated that he was an innocent rancher and that charges made against him by DEA were untrue. He then had the audacity to give his address and invite law enforcement officials from Mexico and the United States to visit him—yet he remains at large.

The Arellano-Felix Organization (AFO), often referred to as the Tijuana Cartel, is one of the most powerful and aggressive drug trafficking organizations operating from Mexico; it is undeniably the most violent. More than any other major trafficking organization from Mexico, it extends its tentacles directly from high-echelon figures in the law enforcement and judicial systems in Mexico, to street-level individuals in the United States. The AFO is responsible for the transportation, importation and distribution of multi-ton quantities of cocaine and marijuana, as well as large quantities of heroin and methamphetamine, into the United States from Mexico. The AFO operates primarily in the Mexican states of Sinaloa (their birth place), Jalisco, Michoacan, Chiapas, and Baja California South and North. From Baja, the drugs enter California, the primary point of embarkation into the United States distribution network.

The AFO does not operate without the complicity of Mexican law enforcement officials and their subordinates. According to extradition documents submitted by the Government of Mexico in San Diego, California, key family members reportedly disperse an estimated \$1 million weekly in bribes to Mexican federal, state and local officials, who assure that the movement of drugs continues to flow unimpeded to the gateway cities along the southwestern border of the United States.

The Arellano family, composed of seven brothers and four sisters, inherited the organization from Miguel Angel Felix-Gallardo upon his incarceration in Mexico in 1989, for his complicity in the murder of DEA Special Agent Enrique Camarena. Alberto Benjamin Arellano-Felix assumed leadership of the family structured criminal enterprise and provides a businessman's approach to the management of drug trafficking operations.

Ramon Eduardo Arellano-Felix, considered the most violent brother, organizes and coordinates protection details over which he exerts absolute control. Ramon Arellano's responsibilities consist of the planning of murders of rival drug leaders and those Mexican law enforcement officials not on their payroll, as well as AFO members who fall out of favor with the AFO leadership or simply are suspected of collaborating with law enforcement officials. Enforcers are often hired from violent street gangs in cities and towns in both Mexico and the United States in the belief that these gang members are expendable. They are dispatched to assassinate targeted individuals and to send a clear message to those who attempt to utilize the Mexicali/Tijuana corridor without paying the area transit tax demanded by the AFO trafficking domain.

A joint task force composed of the Drug Enforcement Administration and the Federal Bureau of Investigation has been established in San Diego, California, to target the AFO; the Task Force is investigating AFO operations in Southern California and related regional investigations which track drug transportation, distribution and money laundering activities of the AFO throughout the United States.

The Amezcua-Contreras brothers, operating out of Guadalajara, Mexico head-up a methamphetamine production and trafficking organization with global dimensions. Directed by Jesus Amezcua, and supported by his brothers, Adan and Luis, the Amezcua drug trafficking organization today is probably the world's largest smuggler of ephedrine and clandestine producer of methamphetamine. With a growing methamphetamine abuse problem in the United States, this organization's activities impact on a number of the major population centers in the U.S. The Amezcua organization obtains large quantities of the precursor chemical, ephedrine, utilizing contacts in Thailand and India, which they supply to methamphetamine labs in Mexico

and the United States. This organization has placed trusted associates in the United States to move ephedrine to Mexican methamphetamine traffickers operating in the U.S. Jose Osorio-Cabrera, a fugitive from a Los Angeles investigation until his arrest in Bangkok, was a major ephedrine purchaser for the Amezcua organization.

Like most organized crime groups, major drug traffickers in Colombia, Mexico and Southeast Asia rely on corruption and intimidation to further their goals. The problems of corruption and violence are particularly acute in Mexico.

Since 1993, twenty-three major drug-related assassinations have taken place in Mexico, particularly in the Tijuana area. Virtually all of these cases are unsolved. In the February 24, 1997 issue of U.S. News and World Report, an article titled "An Inferno Next Door" reports that "Mexico's drug gangs buy the officials they can—and kill those they can't." In a particularly grisly episode, the article tells the story of Hodin Gutierrez, a young prosecutor who was one of eight law enforcement officials recently killed in Tijuana. After winning a conviction against a corrupt state police officer and investigating the murder of a police chief who had refused a bribe, Gutierrez was shot 120 times and his killers then repeatedly ran their vehicle over his dead body. The killers were allegedly working for Mexican drug traffickers.

Unfortunately, the violence that is attendant to the drug trade in Mexico is spilling over the border into U.S. towns, like San Diego, California and Eagle Pass, Texas. Last summer, ranchers along the Texas/Mexico Border reported they were besieged by drug organizations smuggling cocaine and marijuana across their property—fences were torn down, livestock butchered and shots were fired at the ranchers' homes at night. Ranchers reported seeing armed patrols in Mexico with night vision equipment, hand-held radios and assault rifles that protected a steady stream of smugglers back packing marijuana and cocaine into the United States. The problem became so acute that the State of Texas and the federal government, sent support in the form of additional U.S. Border Patrol Agents, DEA Special Agents, Officers from the Texas Department of Public Safety and the Texas National Guard. Life has returned somewhat to normal in that area, as the drug gangs reacted to law enforcement pressure and have moved their operations elsewhere.

#### ORGANIZED CRIME'S SURROGATES IN THE UNITED STATES

The international drug trafficking syndicates cannot operate effectively without an infrastructure in the United States composed of high level managers, transporters, accountants, communications experts, storage experts and enforcers. The Colombian traffickers, and to a large extent the traffickers from Mexico who are currently dominating the international drug traffic, establish bases of control in major U.S. cities, and rely on an intricate network of cells, similar to the structure employed by international terrorist organizations. Cell managers maintain close communication with organized crime figures in Colombia and Mexico, and are in some sense, the "foreign service" of these drug organizations, representing the syndicate's interests abroad.

These managers use an effective system of communications to coordinate daily operations. Cell phones, beepers, pay phones and faxes ensure that U.S. representatives are given the most recent information on loads, prices, storage locations and contacts in order to conduct the complex business of drug trafficking. A cell director typically reports directly to the cartel's principals in Colombia and oversees a city-wide area of operation. He directs specific functions including accounting, financial movement, storage of the product, a motor pool and other logistical matters requiring high level attention and discretion.

Both Colombian and Mexican organizations headquartered overseas rely on their networks in the U.S. to distribute vast quantities of cocaine, heroin, methamphetamine and marijuana. At the present time, Colombian organizations are responsible for supplying heroin and cocaine to traffickers on the East Coast of the United States. Mexican organizations dominate the cocaine trade in the Western portion of the U.S. and the methamphetamine business, which is rapidly growing throughout the West, Midwest, Southwest and increasingly, Southeast sections of the United States. Colombian trafficking organizations are now providing free samples of South American heroin as part of their cocaine transactions in order to introduce users to their high potency and relatively inexpensive product. In the methamphetamine trade, large organizations in Mexico, which produce methamphetamine, distribute the product to Mexican groups within the United States for distribution in California, the Southwest and the Southeast regions of the country.

Primary bulk cocaine distribution centers within the United States include Southern California, Southern Texas, New York City and Southern Florida. From these centers, cocaine is shipped throughout the United States for delivery to lower level distribution groups in secondary source cities. Distribution groups within the United

States usually include street gangs and ethnic groups, and in the case of New York, primarily Dominican traffickers with strong ties to Colombian organizations.

A recent case in New York illustrates the flexibility of these trafficking organizations and demonstrates clearly how the structure of trafficking groups changes to meet new situations and opportunities. Just last month, nine members of a cocaine distribution ring operating in New York City were arrested and over two tons of cocaine was seized. What was different about this organization was the fact that Mexican traffickers were supplying lower-level Colombian distribution groups in New York City. In most previous cases, Colombian traffickers in the U.S. controlled the top supply and distribution levels, relying on traffickers from the Dominican Republic to distribute cocaine at lower levels.

Many of the most significant drug trafficking cases made today begin, not in foreign countries, but on the streets of our major cities where the surrogates of the drug mafias are operating a multi-billion dollar enterprise. By making strong cases against the top mafia representatives operating in the U.S., large conspiracy cases can be constructed and indictments against the mafia principals can be handed down. However, mafia leaders understand that the larger the number of surrogates operating within the U.S. who are directly tied to the leaders in Colombia, Mexico, or Burma, the greater the vulnerability of the entire operation.

#### VIOLENT DRUG TRAFFICKING ORGANIZATIONS IN THE UNITED STATES

Violence and the drug trade go hand-in-hand, and while overall crime figures are down for the fifth year in a row, drug-related violence continues to be an extremely difficult problem facing too many American communities.

While violence permeates every level of drug trafficking, it is particularly acute at the local level where drug dealers use violence as a method to gain control of the trade, or rectify differences. Many violent drug dealers are themselves users, and their violence is fueled by crack or methamphetamine.

If the drug trade is seen as a seamless continuum, it is evident that the violent drug dealer operating on the streets of Los Angeles, New York, Chicago, the Southwest Border—or in rural areas such as Sandy Level, Virginia, or Rocky Mount, North Carolina—is connected directly or indirectly to the major traffickers headquartered in Cali or Guadalajara. In some cases, there is a direct link between homicides committed within the United States and the orders of drug lords across international borders.

Along the Southwest Border, there have been many incidents of violence and intimidation carried out by representatives of the major traffickers in Mexico; last summer, there were numerous press accounts of ranchers along the Texas/Mexico border who were targeted by drug organizations smuggling cocaine and marijuana across their property. Livestock were killed and gunfire was aimed at the ranchers' homes. The problem was so serious that additional law enforcement resources from the state and federal government were sent to improve the situation.

In San Diego, a violent group called the "Logan Heights Calle 30" was acting on the orders of the Arellano-Felix group to carry out executions and maintain security for their distribution efforts. Six members of this group were arrested by DEA and the San Diego Police Department for the murder of a man and his son in San Diego. A total of 49 members of "Calle 30" have been arrested by the San Diego Task Force on drug trafficking and violent crime charges.

In recent years, the San Diego area has been the scene of much drug-related violent crime. In 1993, twenty-six homicides related to the methamphetamine trade were committed. As recently as December of 1996, the Arellano-Felix organization ordered the death of an individual who was shot in the face five times during a rush hour homicide in an exclusive community in Coronado, California.

Drug-related violence is not limited to the Southwest Border of the United States. Puerto Rico has experienced a dramatic increase in violent crime as the drug trafficking situation there is worsening. Violence is also not limited to urban areas; during last year's appropriations testimony we discussed the tragic situation in Sandy Level, Virginia, where violent crack dealers had terrorized the residents of this small town which had been settled by freed slaves. Increasingly, areas of the country, once immune from the effects of drug-related violence, are now reeling from murders, assaults and other violent crime related to the drug trade. With the spread of methamphetamine to rural areas in Georgia, Missouri, Tennessee and other states, drug-related violence is quickly following.

*Methamphetamine*

Within the past several years, the problems of methamphetamine production, trafficking and use have significantly increased. Between 1990 and 1995, methamphetamine related hospital emergencies tripled. During this same time period, there was a dramatic increase in the number of meth-related deaths in cities such as Los Angeles, Phoenix, and San Diego. Even in cities relatively untouched by drug abuse, methamphetamine was taking a terrible toll. From January 1993 to June 1994, Oklahoma City witnessed 14 meth related deaths; in the next year, the number increased to 36, an increase of over 150 percent. Similar patterns were beginning to emerge around the country as methamphetamine spread. In Arkansas, meth-related investigations rose from 543 in 1988 to over 2,000 in 1995. Missouri authorities tripled their lab seizures between 1994 and 1995. In 1995, 80 percent of Iowa's drug investigations were meth-related.

The methamphetamine problem had previously been relatively isolated to places like California, and some rural areas where outlaw motorcycle gangs had operated small labs and supplied small quantities of the drug. However, during the past several years, drug traffickers from Mexico have taken over the meth trade and have expanded it significantly, increasing not only the supply of meth, but the violence associated with the trade. As previously indicated, in 1993, a total of 26 murders took place in the greater San Diego area, all of which were the result of rivalries among meth trafficking organizations. Numerous incidents, such as the death of DEA Agent Richard Fass in 1994 and a recent killing of two Riverside Sheriff's deputies by a meth-crazed gunman, graphically illustrate the tragedies spawned by methamphetamine.

DEA has irrefutable evidence that sophisticated trafficking organizations based in Mexico dominate the U.S. methamphetamine market. They operate labs in Mexico and California and these traffickers have plans to expand production and trafficking eastward. Recent seizures in Florida, Georgia and Iowa are proof that methamphetamine is no longer a West Coast problem.

In 1996, DEA hosted a national conference on methamphetamine, at which time, representatives from state and local departments provided DEA and other law enforcement agencies with information on the meth problem, and suggested ways to address it. Many of these suggestions were incorporated into the President's national methamphetamine strategy and were included in the Comprehensive Methamphetamine Control Act of 1996, which Congress passed last year.

*Heroin*

The heroin problem is also a serious law enforcement challenge. Heroin has been an issue for over two decades, but today's version of the heroin threat is critical because of the wide availability of the drug, as well as its high potency and low price. In 1995, retail heroin had an average nationwide purity close to 40 percent, over five times higher than the 7 percent which was common only a decade ago. There has been a marked increase in the number of heroin-related overdose deaths as well. Over 4,000 people died of heroin overdoses in each of the last three years. Today's mortality figures are the highest ever recorded, surpassing the totals in the mid-1970's when deaths reached over 2,000. Emergency room admissions for heroin have doubled between 1990 and 1995 and the impact of increased heroin availability has been evident in cities such as New York, Boston, Philadelphia, Baltimore and smaller cities, such as Orlando, Florida.

One of the most serious developments in the heroin problem has been the emergence of South American heroin as a significant segment of the heroin supply. During 1995, 62 percent of the heroin seized in the U.S. was of Colombian origin, up from 32 percent the previous year. It is cheaper, purer and more widely available than the heroin we have previously seen in the U.S. Using already-established trafficking networks and contacts within major urban areas, Colombian traffickers have successfully assumed the lion's share of the lucrative heroin market in the northeast corridor of the United States, using techniques such as brand names, free samples and cut-rate prices to lure a new heroin clientele. Heroin this pure can be smoked, a method of delivery which appeals to a wider range of drug users who do not wish to inject heroin.

At a recent heroin conference sponsored by the Drug Enforcement Administration, state and local law enforcement officials repeatedly told participants that the heroin problem was growing more severe in their areas of jurisdiction, and many reported that South American heroin was widely available from New England to South Florida and that overdose incidents were dramatically increasing.

## THE U.S. LAW ENFORCEMENT RESPONSE TO ORGANIZED CRIME

DEA is working with a number of other federal law enforcement entities—the FBI, the U.S. Attorneys' offices, the Criminal Division at the Department of Justice, the U.S. Customs Service, the Border Patrol—and a host of state and local law enforcement organizations, to respond to the significant problems posed by organized crime groups from Mexico. In order to effectively meet the challenges presented by sophisticated drug trafficking organizations, it is necessary for us to attack the command and control mechanisms of these organizations.

Organized crime groups from Mexico operate in a similar manner to their Colombian counterparts, compartmentalizing their operations to reduce the possibilities of damage should one element of the operation become vulnerable. Working together, federal law enforcement agencies are conducting court-authorized wiretaps that target the communications systems of the organizations, ultimately identifying them from top to bottom. In so doing, it is possible for law enforcement to track criminal syndicates working from boardrooms in Colombia, to their distribution rings within the United States.

Based on the tested premise that the only way to impact these criminal organizations is to go after their top leadership and U.S. based infrastructure, the Southwest Border strategy is highly successful in targeting the leadership of these groups operating within the U.S. However, without commensurate, consistent action by law enforcement in Mexico, the world's most significant drug traffickers will remain at liberty to conduct their business. We have seen important changes in the Colombian drug trade which are the result of the Cali leaders' incarceration. It is our goal to effect similar, dramatic changes in the organized crime groups from Mexico.

Later in this testimony, details of Operation Zorro II, a prototype of an organized crime investigation used in our Southwest Border Strategy, will be discussed. Investigations such as this one are intensive and expensive, but are worth the investment. Currently, there are additional ongoing investigations, the details of which can be shared with the committee in closed session.

*Highlights, 1996—A Year of Results*

During the past year, DEA, working with state, local and international counterparts, targeted high level drug traffickers around the world. A number of significant cases came to fruition, leading to the arrest and incarceration of major drug traffickers.

*Operation Zorro II.*—As part of the inter-agency Southwest Border initiative, on May 2, 1996, federal, state and local law enforcement agencies successfully completed a unique operation which targeted a Mexican-run cocaine smuggling and distribution network within the United States with ties to the Colombian drug mafia. Using over 90 court-authorized wiretaps, law enforcement personnel were able to arrest 156 traffickers from Los Angeles, Chicago, El Paso, Houston and other cities, and seize 5,600 kilograms of cocaine, over a thousand pounds of marijuana and almost a kilogram of crack cocaine. Operatives of organized crime groups in Mexico smuggled cocaine over the Mexican/U.S. border and once in the U.S., the cocaine was stored in the LA area for eventual distribution to Miami, Chicago, Philadelphia, New York, Newark and Richmond, by representatives of Mexican organized crime and the Cali Colombia syndicate. Zorro II involved over 40 state and local law enforcement agencies, DEA, the FBI, the DOJ Criminal Division, 10 U.S. Attorney's Offices and seven other federal agencies. This case was extremely significant because it simultaneously dismantled both the organization that owned the cocaine, as well as a second organization that ran the transportation system.

*Operation Global SEA.*—In an important heroin case, federal, state and local law enforcement officials disrupted a Nigerian-run narcotics network which stretched from Thailand to the U.S. Working with international law enforcement officials, the DEA, FBI, U.S. Customs Service and the United States Attorney's Office targeted the heroin organization which was responsible for trafficking multi-kilogram quantities of heroin from Thailand to Chicago. Typically, heroin couriers working for the Nigerian organization traveled with heroin-laden suitcases through Europe and Mexico before bringing the heroin over the Mexican/Texas border for distribution in Chicago. Forty-four individuals were arrested in the United States and abroad. The total amount of heroin seized in Operation Global SEA was worth between \$20 to \$25 million on the streets of the United States.

*Mobile Enforcement Teams.*—On the homefront, DEA's Mobile Enforcement Teams (MET's) made a positive impact in many American communities. Based on the premise that drug trafficking and drug related violence contribute to the degradation of the quality of life in too many American communities, DEA's response

has been to aggressively target and build cases against individuals involved in violent drug trafficking activities.

The MET's were developed to assist state and local law enforcement agencies in their efforts to address the problems of drugs and drug-related violence. Since their initial deployment in 1995, these teams have worked with state and local law enforcement agencies to address drug-related violence in cities and rural areas around the nation. In places such as Spartanburg, South Carolina; the Rampart section of Los Angeles; Galveston, Texas and Toledo, Ohio, MET teams have, to date, deployed 85 times, arrested 2,577 individuals and seized over \$3 million in currency and 250 weapons. The MET program, which was fully funded by Congress in fiscal year 1997, is based on the belief that those who distribute drugs on the streets of the United States and commit violent activities are part of a seamless international continuum of drug trafficking organizations headquartered in Colombia, Mexico and Southeast Asia.

During 1996, in just one example of how drug law enforcement efforts can make a significant difference, a MET deployment in the Rampart area of Los Angeles assisted state and local law enforcement officers to help combat drug-related crime and the violence associated with open-air drug markets. The neighborhood had been ravaged by drug dealing and drive-by shootings, and was the most dangerous area of Los Angeles. Between April and July of 1996, DEA, working with the ATF, INS and the Los Angeles Police Department of Corrections, made 412 arrests ranging from minor offenses, to violations of federal law. DEA arrested 141 individuals on drug charges, including gang members. The entire operation netted \$70,000 in U.S. currency, 28 weapons, 1,270 grams of black tar heroin, 640 grams of cocaine, 104 pounds of marijuana and a small quantity of methamphetamine.

After the deployment, crime and violence in the area dropped immediately, and for the first time in five years, there were weeks when no homicides were committed. Aggravated assaults, sexual assaults and burglaries were down significantly.

#### FIGHT AGAINST GLOBAL DRUG TRAFFICKING: LESSONS LEARNED

Over the past several years, there have been major successes in law enforcement across the board, and many of the lessons learned from increasingly sophisticated responses to violent crime and drug trafficking have had an impact on DEA's operations, and the operations of other law enforcement agencies. It is very clear, after years of intensive and smart law enforcement efforts, that law enforcement works. This is particularly true in places such as New York City, where dramatic reductions in the crime rate confounded many who thought law enforcement could not be an effective answer to the crime problem. It was also clear that effective law enforcement costs money, and requires that infrastructure needs be maintained in order to ensure that personnel have the tools necessary to do the job. We have also learned the importance of identifying and acting against emerging drug threats in order to get ahead of the curve—a hard lesson we learned from our response to the crack epidemic.

*Law Enforcement Works.*—During the late 1980's and early 1990's, when drug-related violence rose to unprecedented levels, communities supported the premise that federal, state and local law enforcement had to act decisively to address crime. Consistent, energetic and targeted law enforcement efforts resulted in dramatic decreases in the crime rates in many cities: in New York, the murder rate has fallen by 50 percent in five years; in Houston, 49 percent; and in Boston, 62 percent. The overall crime rate in our nation has fallen to its lowest level since 1969.

How did this happen? Communities began fighting back, and making a difference, with smart, targeted law enforcement programs. In New York City, a widespread philosophy of aggressive law enforcement was begun. Increases in the police force and in the number of prison beds were approved. No crime was too small to go unpunished. From panhandling, to turnstile-jumping, to graffiti—all quality of life crimes were considered serious offenses against the public good. Arrests went up across the board, and precinct commanders were made responsible for reducing crime numbers in their jurisdictions. Since many crimes are committed by the same criminals, police sought to identify patterns in these crimes, and were able to link crimes to specific individuals. By all accounts the New York City experience is a solid example of what happens when law enforcement targets all levels of violators, including those who degrade the quality of life in communities: citizens can see measurable gains. Increased numbers of police, more prisons and tougher crime policies have paid off.

DEA contributed to the decline in crime rates by working with state, local and other federal law enforcement agencies to aggressively target drug traffickers operating within the United States. Through task forces and DEA's REDRUM program,

drug trafficking organizations, and violent drug trafficking rings, were identified and dismantled during the past decade.

*Sophisticated Targets Require Sophisticated Investigations.*—Drug trafficking networks, controlled by sophisticated organized crime leaders headquartered in Colombia, Mexico, and in many other countries, have sophisticated technology and modern equipment at their disposal. Organizations rely on an intricate system of communications devices—cell phones, faxes, encrypted messages—to carry out their day-to-day operations.

In order to penetrate these organizations, and gather information to make solid cases against their leadership, DEA must compete on a level playing field. Effective investigations, such as Zorro II and Operation Global SEA, are expensive and labor-intensive. The Zorro case, which took three years from beginning to end, depended in large part on wiretaps. This investigation was extremely complex and labor intensive with an estimated cost of \$13 million. Many hours also go into building complex cases: over 103,000 hours were devoted by DEA Special Agents, and another 10,300 by Intelligence Analysts. These costs and manpower estimates do not take into account contributions made by state and local agencies.

In Operation Global SEA, wiretaps were used over a forty-day period in which 23,000 calls were recorded between members of the trafficking organization and the source of supply. A total of \$2 million was spent on wiretap-related services, such as translations and lease lines.

*It is Critical to Identify and Act Quickly Against Emerging Drug Threats.*—Drug trafficking, use and abuse patterns change quickly, with newer, cheaper, and more lethal drugs rapidly entering the scene. The rapid growth of the cocaine and crack trade during the course of the 1980's caught law enforcement officials largely off-guard and proved to have a devastating impact on the citizens of this country. In just a few, short years, law enforcement and public health attention has been re-focused on methamphetamine, heroin and synthetic drugs—drugs which have caused misery, addiction, and all too often, violence in many American communities.

*Aggressive, Effective Law Enforcement Requires Sound Infrastructure.*—The success of ongoing drug enforcement efforts is in large part predicated upon the quality of operational support systems law enforcement organizations have in place. Over the years, the majority of resources provided to law enforcement have been directed towards placing more Special Agents and police officers on the streets, often times at the expense of the critical support and infrastructure systems necessary for long-term enforcement productivity. Without state-of-the-art technical investigative equipment, intelligence, automated data processing systems and operational support facilities, law enforcement's ability to make significant inroads in its efforts to dismantle the operations of major drug trafficking organizations is greatly diminished.

The drug traffickers operating on a global scale today have, at their disposal, technology, transportation capabilities and communications equipment which are the envy of many U.S. corporations. Law enforcement capabilities must match, or exceed, the capabilities of major traffickers. However, with rapid changes in technology, such as digital communications systems, and encrypted equipment, and with only modest assistance from U.S. manufacturers, law enforcement is facing a difficult situation which, unless quickly addressed, will impede our ability to do business in just a few, short years.

DEA, like many other law enforcement agencies, has had difficulty meeting infrastructure needs over the years. Many of these needs have taken a back seat to operational or personnel needs, and they have finally become critical. Two such areas are the DEA laboratory system, which is key to the success of DEA cases being made against major drug traffickers around the world, and the DEA computer system which is fast becoming the lifeblood of DEA investigations.

#### DEA'S FISCAL YEAR 1998 BUDGET: EQUIPPING THE AGENCY FOR THE FUTURE

DEA's fiscal year 1998 Budget request includes funding for important initiatives to target the most significant drug traffickers operating along the Southwest border of the United States, address the methamphetamine and heroin problems which adversely affect so many communities across the nation, and restore DEA's infrastructure needs. DEA is requesting a total of \$1,145,830,000 in direct funding, including 7,216 positions, of which 3,358 are Special Agents. This request includes an enhancement of 382 positions (168 Special Agents) and \$87,042,363 in new program initiatives and represents an overall increase of \$91,812,000 over DEA's 1997 appropriation level.

DEA's budget is spent on program efforts which are dedicated to assisting communities across the nation, and fifty nations around the world in their efforts to identify, target and dismantle the most significant drug trafficking organizations operat-

ing at home and overseas. DEA's budget includes support for over 7,200 personnel; a series of state and local task forces which serve as a multiplier effect in major cities and rural areas of the United States; DEA's Mobile Enforcement Teams which are dedicated to addressing drug-related violent crime; and special programs including marijuana eradication, training, demand reduction and international investigations. DEA's budget is also spent on technical equipment, vehicles, aircraft, and supplies which assist DEA personnel in their day-to-day investigations and investigative support functions.

The \$87 million DEA is requesting in new program funding, is broken into five strategic funding initiatives. These initiatives include the Methamphetamine Initiative, Southwest Border Initiative, Heroin Initiative, Infrastructure Initiative and a Laboratory Reconstruction Initiative.

#### *Methamphetamine*

To address the explosion of methamphetamine abuse, I am requesting \$11 million and 74 positions, including 60 Special Agents. These resources will allow DEA to expand its domestic enforcement efforts, reduce the availability of the chemicals that feed the illicit "kitchens" that pollute the bodies of our citizens and our environment, and provide for the safety of law enforcement personnel through specialized hazardous waste handling training. An all out effort against this highly addictive and dangerous drug will save lives, protect the environment, and help ensure a safe future for our youth. This initiative fully supports the National Methamphetamine Strategy and is vital to stalling the momentum of this growing drug of choice.

#### *Southwest Border*

To expand our continuing interagency effort on the Southwest Border, I am requesting \$29.7 million and 192 positions, including 96 Special Agents. These resources will purchase investigative equipment, enhance intelligence gathering, provide increased air support to this vast open border, and provide additional agents and support staff to deal with the increase in investigative caseload. The increasing concentration of DEA, FBI, and INS resources working cooperatively along the 2,000 mile border with Mexico is not only getting results, it demonstrates that federal law enforcement can save resources, share information, and work effectively in joint investigative efforts. These additional resources are the next installment in our growing border presence and are sorely needed to cope with the huge volume of drugs transiting this area.

#### *Heroin Strategy*

To address the growing availability of increasingly pure and cheap heroin, I am requesting the resources to continue to build upon our Domestic Heroin Enforcement Strategy, begun last year. For fiscal year 1998, I am requesting \$5 million and 60 positions, including 12 Special Agents. The growth in popularity of this deleterious and addictive drug is an ominous sign to those of us who are aware of heroin's destructiveness and the huge costs it brings to our nation's health care system. This reemerging menace cannot be allowed to go unaddressed.

#### *Vital Infrastructure*

For many years, DEA has been forced to build its investigative force by eroding vital infrastructure resources and redirecting them into operational enforcement activities. Last year, you helped us address this problem for the first time by providing significant new resources to restore our eroded infrastructure base. While some of the funding for these critical investigative support components was provided, I am requesting \$33.4 million and 19 support positions to further strengthen our infrastructure in support of law enforcement efforts. These funds are absolutely essential if DEA is to field a modern investigative work force. Our Special Agents must have the computers, aircraft, and tools of technology to do their job. These tools must be maintained, replaced, and upgraded periodically if they are to multiply our agents effectiveness. Most importantly, I need sufficient funds to relocate Special Agents when the job requires them to change their place of duty. Career Special Agents should not be denied the opportunities for development, training, advancement and protection afforded by periodic changes of duty station.

#### *Laboratory Reconstruction*

Last year, you provided nearly \$31 million in construction funding to build a much needed training facility at Quantico, Virginia, and seed money to begin bringing obsolete laboratories up to acceptable health and safety standards. I am pleased to report that construction at Quantico will begin in early April. Our laboratory reconstruction effort is also well underway. I am requesting an additional \$4 million this year to continue the financing of a multi-year, \$21 million effort to rebuild un-

safe and inefficient laboratory facilities. We owe our chemists and support staff a safe working environment and we owe the nation facilities that can handle the increased volume of drugs and evidence flowing from burgeoning investigations.

In closing, I would like to again thank the Committee for its long standing support of DEA and urge your support of these important initiatives. I will be happy to answer any questions the Committee may have at this time.

#### COMMISSIONER MEISSNER'S OPENING STATEMENT

Senator GREGG. Commissioner.

Ms. MEISSNER. Thank you, Mr. Chairman and members of the subcommittee. I would like to begin today by reporting on my recent participation in a very successful visit to the United States-Mexico border led by Representative Jim Kolbe and other members of the House Appropriations Committee. The trip was important because it allowed the members and the staff of the House committee to see firsthand the progress that INS has made in just 3 years in fulfilling one of its toughest and highest-priority missions. I would like to invite members of this subcommittee to make a similar visit, if that is at all possible, because it really is the best way to demonstrate the improved competencies of the Immigration Service since 1994, when we began to undertake significant management reforms of the agency and when this subcommittee and the administration began working together to provide the resources that INS has so long needed.

I was particularly pleased because the Southwest border strategy is, in many senses, a microcosm of the work that we now know this agency is truly capable of performing.

#### FACING CHALLENGES

The multiyear comprehensive enforcement strategy that we began implementing 3 years ago, centering on the busiest illegal crossing point on the entire border, San Diego, CA, contains all of the challenges facing the agency as a whole. It includes the challenge of hiring and training unprecedented numbers of new agents and other personnel, redesigning and streamlining outmoded systems and procedures, developing, installing, and adapting new equipment and technologies to make us more efficient, and working cooperatively with other Federal and local agencies, especially the Customs Service, the DEA, the FBI, and local law enforcement officials.

These are all difficult tasks. They all started from a base of serious performance deficiencies, and they all have occurred against the backdrop of historically high migration pressures from around the world.

The story of the Southwest border challenge and our response is the story of INS overall. Mr. Chairman, as you know, I am keenly aware of the agency's historic management weaknesses and the problems that have emerged in attempting to address the dramatic surge that we have experienced in our naturalization applications. We are working internally and drawing on help from outside experts to address these problems.

But while the problems of the citizenship program reflect longstanding infrastructure and management weaknesses of the Immigration Service, they do not accurately reflect the agency's overall abilities and progress at this time.

The reality is that on many fronts, just as at the border, we are meeting the challenges that both the administration and the Congress have set out for us. We are applying effective new strategies to meet a historic rise in enforcement and service delivery needs, including implementing a new immigration law that requires developing more than 60 new regulations and 70 new forms and training almost 20,000 staff to use them properly.

We are effectively managing unprecedented growth in technology and personnel resources, and most importantly, we are facing and fixing chronic, decades-old management problems that have plagued INS efforts in the past. And we are doing all these things at the same time.

I am proud of the progress that we have made, working together with the Congress, and I am pleased that that progress has been recognized by a distinguished panel of the National Academy for Public Administration with whom we contracted to analyze the INS budget and priority processes that we established in 1994. Their January report signaled approval of our new initiatives and has provided valuable guidance on next steps for continuing the advances.

At the same time, we know that we face major challenges in improving the accountability, the effectiveness, and the professionalism of the agency. Key steps to ensure that a culture of accountability takes hold include the following:

#### MANAGEMENT REFORMS

We have built back our Office of Internal Audit and created a new INSpect program with resources dedicated to top-to-bottom reviews of all field offices on a regular 2- and 3-year cycle. I have concluded that we need further organizational and senior personnel changes and have developed a plan for that, which will be forwarded to the subcommittee in the coming weeks. It will strengthen field management and send a strong signal about my expectations for effective management and integrity of INS work processes.

We are also implementing competency-based criteria for promotions as a means of overcoming seniority as the sole basis for career advancement in the agency.

These and many other measures build on a myriad of steps that have already been taken to bolster accountability and professionalism in the Immigration Service.

In support of strong management reforms such as these, the Service's fiscal year 1998 budget request contains critical infrastructure proposals that we hope the committee will grant. They include continued equipment and technology infusions and status verification and files cleanup and centralization initiatives.

#### PREPARED STATEMENT

Mr. Chairman, let me close by stating that our problems are not intractable, as we have demonstrated in many areas of our work, but they do require multiyear, often laborious step-by-step efforts. INS has come a long way in 4 years. With your continued support, I am confident we will go even further.

Thank you.  
[The statement follows:]

#### PREPARED STATEMENT OF DORIS MEISSNER

##### INTRODUCTION

Thank you Mr. Chairman, and Members of the Subcommittee, for the opportunity to appear before you today to discuss the President's fiscal year 1998 budget request for the Immigration and Naturalization Service (INS).

Mr. Chairman, I have now been with INS for almost four years. When I came to this agency, I was aware of the problems I was inheriting. The INS has had a long history of neglect and management problems. In the January 1991, GAO Report to the Congress: Immigration Management, the auditors highlighted the history of problems at INS—I quote: “Over the past decade weak management systems and inconsistent leadership have allowed serious problems to go unsolved \* \* \* Without coherent overall direction and basic management reforms, the organization has been unable to effectively address the changing enforcement responsibilities and longstanding service delivery problems.”

We have not only been challenged by past neglect and management problems, but the agency has also experienced a continual wave of new challenges. INS has dealt with the devaluation of the peso in Mexico, which hit its lowest point in over a decade in 1993, just as we began to implement our efforts to enhance border control. We have been challenged by mass migration of both Cuban and Haitian migrants to South Florida, as well as mass smuggling of Chinese migrants. We have been challenged by an increase in immigration petitions and applications, including a threefold increase in citizenship applications. The INS is also facing the effects of implementing major changes to immigration law contained in three pieces of legislation, the Personal Responsibility and Work Opportunity Reconciliation Act, the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) and the Antiterrorism and Effective Death Penalty Act, all passed last year. These new laws have required us to rewrite many of our enforcement and service regulations, retrain our workforce, and educate the public. All of this has challenged our often outdated systems and procedures which we continue to reform and improve while we manage unprecedented growth.

This Administration, you, and the other Members of the Subcommittee, have provided continued support and increased resources to strengthen and enforce our Nation's immigration laws. I realize the Subcommittee has several concerns about recent problems at INS. We have taken corrective measures, implemented improvements in planning and operations, and provided enhanced training to our officers. We have come a long way as an agency. In the face of numerous challenges, we have made monumental improvements in the way INS works. However, I recognize that there is still much work to be done.

Mr. Chairman, the fiscal year 1998 budget I present to you today builds on our four-year effort to strengthen our borders, increase our enforcement efforts in the American workplace, remove criminal and other deportable illegal aliens from our streets and prisons, process applications for citizenship and legal entry into our country efficiently and effectively, and enhance the professionalism of our workforce.

##### ACHIEVEMENTS

Before I begin discussing the 1998 budget request, I would like to take a moment to tell you about the notable progress we have made. Our accomplishments clearly illustrate that we are not an agency standing still. We continue to meet the challenges we face. We have made some mistakes along the way, but we are seeing real change.

##### BORDER CONTROL ACHIEVEMENTS

First, I want to thank the Members of the Subcommittee for working with the Attorney General and me to develop a plan for hiring the additional personnel needed to support the President's Immigration Strategy.

In 1994, the Attorney General and I announced a multi-year border enforcement plan committing this Nation to a comprehensive border enforcement strategy. Under the Administration's strategic plan, by the end of fiscal year 1997, Border Patrol staffing will have increased by 73 percent since fiscal year 1993, for a total of 6,859 agents on-board. Border Patrol agent growth along the Southwest border will have increased by 85 percent over the same time period. We will also increase the number of inspectors at ports-of-entry by over 50 percent since 1993, which will facilitate

traffic movement and commerce at ports-of-entry and provide major improvements in meeting the time requirements at our international airports. In fiscal year 1996, over 500 new Inspectors were deployed along the Southwest border, and 150 more will be deployed in fiscal year 1997. The combined increase in Border Patrol agents and Inspectors will result in a balanced, effective border enforcement strategy. To manage this growth, we have put into place a comprehensive growth management plan, in which new agents are being hired on an ongoing basis to meet the fiscal year 1997 target.

We surpassed our fiscal year 1996 goal of 5,778 Border Patrol agents on-board. In fact, we exceeded our target by 100 agents. As of March 1, we had 6,141 Border Patrol agents on-board. This includes 481 trainees at the Charleston and Glynco training facilities. Additional classes are scheduled throughout the year to meet the fiscal year 1997 goal. As part of the comprehensive plan, we have also strengthened recruitment efforts through more focused recruitment activities. A competency-based assessment battery for Border Patrol agents seeking supervisory promotions was designed and validated. These measures will help ensure that we have qualified agents on-board and the best qualified are promoted to supervisory positions.

The new satellite training facility in Charleston, South Carolina, opened in April 1996, continues to provide the additional capacity needed to train the large number of Border Patrol agents being hired.

This is the first Administration to outfit agents with the equipment and technology to perform their jobs more efficiently and safely. With the new vehicles, bullet proof vests, night scopes, ground sensors, lighting along the border, encrypted radios and computer-assisted dispatching and case processing systems, our front line agents are better supported than at any point before.

Focusing additional resources on new Border Patrol staffing and equipment has yielded significant results. Hours dedicated specifically to linewatching, by agents working directly along the border, increased by 17 percent in fiscal year 1996. The Border Patrol made over 1.5 million apprehensions for the year. In San Diego, El Paso, Nogales, and the areas between them we are deterring illegal traffic and disrupting smuggling operations. Operation Hold the Line has significantly diminished illegal immigration between Ciudad Juarez, Mexico and El Paso. In a similar fashion, Operation Safeguard has allowed INS to regain control of downtown Nogales. Through Operation Gatekeeper, begun in 1994, INS has gained substantial control of the Nation's busiest and most vulnerable border near San Diego, from Imperial Beach to Chula Vista to Brownfield. The San Diego Union-Tribune heralded the success of Operation Gatekeeper in a July 15, 1996 article by stating that the operation "is transforming the region around the San Ysidro and Otay Mesa border crossing from lawless, chaotic places into the picture of order." Similar support from the community is continuously echoed. San Diego Sheriff William Hollander was quoted last year as follows: "I worked the border in the 1960's and I've never seen the Federal government make this kind of effort."

#### REMOVAL OF ILLEGAL ALIENS

The removal of criminal and other deportable aliens is one of the key components of INS' comprehensive strategy to prevent and deter illegal migration. In fiscal year 1996, INS removed a record 68,294 deportable aliens from the country, of which 54 percent were criminal aliens. Of the 36,754 criminal aliens removed from the United States, 10,323 completed the Institutional Hearing Program process. This represents an overall increase in removals of 37 percent over fiscal year 1995. As of the end of February of this fiscal year, there have been 34,421 overall removals, of which 19,045 have been criminal alien removals, putting INS on target to remove at least 93,000 aliens in fiscal year 1997.

INS bed space increased dramatically over the year. INS' ability to detain aliens is directly linked to our ability to remove them from the United States. In fiscal year 1995, INS maintained an average of 6,000 detention beds. In fiscal year 1996, the average increased to 8,200 and the Service closed the year with an all-time high of 9,500 beds. As of March 17, INS had over 11,500 beds in use. By the end of fiscal year 1997, INS is expected to have 12,050 detention beds in use. The increased bed space is critical to meeting the requirements of the new immigration legislation's mandatory detention provision.

#### WORKSITE ENFORCEMENT

To more effectively control the border, we must also strongly enforce employer sanctions and labor standard laws in the workplace. With the emphasis this Administration has placed on Worksite Enforcement over the past four years, we are now seeing effects. Over 13,800 unauthorized workers were apprehended at the work-

place in fiscal year 1996, and these jobs were made available to authorized workers. In fiscal year 1996, INS completed over 5,200 employer sanctions cases and identified 1,555 employers who knowingly hired illegal aliens or violated the laws pertaining to employer sanctions. Over \$4.8 million in fines was collected from employers who violated immigration laws.

We significantly increased interagency efforts in fiscal year 1996, aimed at stopping major violators in industries with a history of employing unauthorized workers. With the Department of Labor's assistance, INS addressed illegal employment and the exploitation of labor, resulting in 542 investigations, of which 329 were joint investigations last year. The joint investigations focused on abusive employers, particularly in the garment industry.

The INS expanded the award-winning Operation Jobs and continues to work with State and local authorities to place authorized workers into job vacancies created when unauthorized workers are removed from the workplace.

The INS also made major advances in automation of the alien status verification process and continued the expansion of the Verification Information Systems (VIS) into new industry areas, reaching a total of 1,000 employers participating in the pilot. The inclusion of the meat packing industry into VIS marked a major accomplishment in addressing illegal employment in the Midwest.

Work was completed on the revised Employment Authorization Document (EAD), which documents work eligibility for a wide range of immigrants and non-immigrants. The Service began issuing the new card in February 1997.

#### TECHNOLOGY IMPROVEMENTS

I am also pleased to report to you today that IDENT, our prototype fingerprint identification system, has become an effective tool which has enhanced our border control efforts. We have now installed systems at 80 locations along the Southwest border and expect to have 112 sites deployed by the end of fiscal year 1997.

IDENT allows agents to identify rapidly and accurately criminal aliens and repeat crossers who were apprehended previously. In fiscal year 1996, IDENT matched over 10,500 individuals from the criminal alien lookout database and helped confirm the eastward shift in traffic as a result of Operation Gatekeeper. IDENT also helped agents identify 1,234 suspected smuggler "guides" along the Southwest border. The INS has established an illegal entry recidivism database of 585,632 records and a criminal alien lookout database of 56,006 records on the IDENT system. With its implementation along the entire Southwest border, IDENT provides our agents with a significant tool to support efforts to secure our Nation's borders.

The INS also expanded the Datashare initiative with the Department of State. The increase in the exchange of data between DOS and INS has streamlined the Inspections and Immigration Adjudication process. A pilot program for Immigrant Visa (IV) automation and sharing of information is now in place in Frankfurt, Germany; Georgetown, Guyana; and Juarez, Mexico.

In fiscal year 1996, INS also completed 14 new installations and 13 upgrades of existing sites of the Inter-Agency Border Inspection System (IBIS)—for a total installed base of 161 major air and land border ports-of-entry. IBIS is the core lookout system used by INS inspectors and U.S. Customs at airports and land border ports-of-entry to identify persons of interest.

The Dedicated Commuter Lane (DCL) project was opened in Otay Mesa, California. We enrolled a total of 2,600 people and conduct an average of 800 inspections per day, enabling us to concentrate our inspection efforts on a smaller population of entrants.

The INS Passenger Accelerated Service System (INSPASS) was recognized as the "Best of the Best" in Federal technology leadership in an awards ceremony on February 11, presented by Government Executive Magazine and the Association for Communications, Electronics, Intelligence and Information Systems Professionals. The judges stated that INSPASS, designed to streamline the Inspections process, goes "above and beyond in providing enhanced service to the citizen." INSPASS also received a Federal Technology Leadership Award in November 1996.

In fiscal year 1996, INS worked to improve standard office automation infrastructure and educate the user about the new automation. The INS completed deployment of office automation infrastructure at 143 sites in fiscal year 1996. A total of 235 sites in 34 major INS locales are now infrastructure equipped. In fiscal year 1996, INS trained 10,210 users to bring the user population trained to date to 19,190. We also provided over 7,500 additional users with e-mail, for a total of 16,917 users, allowing for more efficient communications agency-wide.

## IMMIGRATION SERVICES

In addition to our enforcement role, we also realize the importance of being a service provider. In the past four years, we have made a concerted effort to improve services and benefits to our customers. During fiscal year 1996, initiatives such as the Telephone Service Operation pilot initiated in June, the El Paso INSFORM kiosk, and the Forms Center reinvention, have provided easier access to INS information and simplified processing times for some of INS' high demand services. Applications for immigration benefits were up by six percent and actions taken on benefit applications also increased in fiscal year 1996 compared to fiscal year 1995. Last year, INS reached its goal to ensure that eligible persons will have their applications adjudicated within 6 months of filing a citizenship application.

Customer satisfaction surveys were completed at land, air and sea ports-of-entry and the results have been compiled and analyzed for use in making further improvements to the inspections process. During last fiscal year, we also began integrating customer service training with other training activities to improve customer satisfaction.

## ASSISTANCE TO STATES

We started the Law Enforcement Support Center (LESC), which is located in Burlington, Vermont, in fiscal year 1995. Since the LESC's inception, it has received and processed 40,763 status inquiries from law enforcement agencies in three states. LESC pilots have been implemented in Arizona, Iowa, and Florida.

INS participation in the Violent Gang Task Force resulted in notable accomplishments for fiscal year 1996. Through Violent Gang Task Force activity, 1,915 aliens were arrested, 388 of which were aggravated felons. The Task Force seized \$46,629,072 worth of contraband, including narcotics valued in excess of \$42 million.

In fiscal year 1997, INS has designated enhanced cooperation and participation with State and local law enforcement agencies as a new priority. So far this year, INS has begun to test the applicability of community policing. Pilot projects will be developed and implemented in communities across the United States. In New York, we created a formal Citizens Advisory Panel for the New York District Office and conduct conferences involving a variety of community organizations. We also provide training for the vast array of intermediary agencies that provide assistance to immigrants applying for INS benefits.

In Chicago, we developed a joint program with the Illinois Secretary of State and the Chicago Public Library system to provide naturalization information through the library system. We conduct problem resolution activities in response to allegations of unfair treatment by INS agents during worksite operations. In Chicago, we have also become involved in diversity training, by creating educational programs with city schools that have high concentrations of immigrants and by conducting cross-cultural training for District staff and Mexican consulate staff.

In San Antonio we keep local law enforcement agencies informed about INS activities by conducting information seminars. In February 1997, we met with State and local law enforcement agencies at the Omaha District Office to discuss mutual assistance initiatives to deal with drug and alien smuggling on Interstate 80.

## OTHER ACCOMPLISHMENTS

In addition to our many successful activities we also provided extraordinary support to the 1996 Olympics in Atlanta. We had the largest presence in Atlanta of any Federal agency. The National Olympic Planning Group, of which INS was a key player, received a National Performance Review Hammer Award for outstanding, coordinated efforts aimed at expediting processing for international visitors to the Olympics.

Our achievements included creating a new Olympic Identity Card. This card was hailed as one of the most secure, counterfeit-proof documents ever created. We established programs and processing to handle foreign nationals who were excluded from entering the United States because they posed a threat to national security. In support of the Summer Olympic Games, INS provided advanced automated look-out capabilities, including the Portable Automated Lookout System (PALS), the Interagency Border Inspection System (IBIS), and the National Automated Information Lookout System (NAIS). We installed an automated officer dispatch capability based on the system used on the Southwest border for sensor tracking and officer dispatch (CAD) at the Atlanta District office and the Atlanta airport. The INS also helped staff a 24-hour Response Team to address international entry matters.

## CONCERNS AND ISSUES

Although we have made significant progress during the past few years, there have also been some problems about which we share your concern. I realize you and this Subcommittee are keenly interested in several problem areas. Mr. Chairman, I would now like to take the opportunity to directly address some of your concerns.

*Miami*

The Inspector General's report regarding the June 1995 visit of the Congressional Task Force on Immigration Reform to Miami substantiated serious allegations made by employees of our Miami District. The Inspector General found that managers in the Miami District took actions that gave Congress a false impression of the actual work conditions in the District. I deeply regret the damage this has done to our relationship with Congress and this Committee.

As you know, the Department of Justice has concluded the disciplinary process, and taken the necessary actions. The severity of the discipline imposed—including a removal from Federal service, several demotions, and a number of suspensions without pay—was consistent with the seriousness of the offenses.

We have also worked hard to prevent any such incident from ever occurring in the future. We have reinforced the message throughout the agency, that honesty and integrity must be the core of all our work. Numerous instructions and directives have been issued as a result of the Inspector General's report, and we are working closely with our managers to ensure full compliance. In response to management concerns at the Miami District, I have filled the Miami District Director and Deputy positions with seasoned INS managers. We have also implemented a management review program, INSpect, which will give us regular and systemic oversight over field operations. One of the very first INSpect assignments examined the Krome Service Processing Center in Miami.

These management decisions and the disciplinary actions that have been taken will mark the close of a sad and painful chapter for all of us at INS, one from which I hope, we at INS have learned a valuable lesson.

*Citizenship USA*

In the ten years before 1992, INS received fewer than 300,000 naturalization applications per year. By contrast, in fiscal year 1995, we received more than one million applications, more than tripling our workload in this important area. Applications increased another 15 percent in fiscal year 1996. Backlogs were at unacceptable levels. Waiting times in some cities were approaching three years. Therefore, in the Summer of 1995, we developed and launched Citizenship USA as a way of meeting demands and making necessary improvements to the naturalization process. We received bi-partisan congressional support for our plans through the approval of the reprogramming notifications by our Appropriations Committees in fiscal year 1995 and 1996.

The goal of Citizenship USA is to achieve timely adjudication of naturalization applications, and reduce an unconscionable backlog created by the surge in applications.

In hindsight, we recognize that we were using outdated policies and procedures. Our increased demand for fingerprint checks also increased pressure on the FBI and slowed the time period for obtaining responses. We relied on a 15-year-old assumptive policy regarding the receipt of FBI fingerprint checks, acting on cases where "idents" were not received within 60 days on a presumption that it was an indication of no FBI record.

We now have a fuller understanding of our most serious vulnerabilities regarding the naturalization process and have implemented policies to resolve those problems. We are in the process of conducting a review—overseen by KPMG Peat Marwick at our Service Center in Lincoln, Nebraska—of the rap sheets for the individuals identified as having FBI records. We will make additional improvements and initiate the necessary naturalization revocations once the Lincoln review is completed.

Working with the FBI, as of November 1996, we have implemented specific procedures that preclude naturalizing any person for whom we do not have a response from the FBI, either positive or negative. In hindsight, this should have been done previously. It is being done now.

We implemented quality control procedures to provide a documented record of each case as it is processed. In addition to our own oversight of these procedures, we have asked KPMG Peat Marwick to review quality control procedures to give us an independent look at their implementation. We have also tightened naturalization test procedures and hired a contractor to monitor the testing entities. Coopers and Lybrand has been selected to conduct a comprehensive re-engineering of all aspects of our naturalization program.

I hope that Congress and the American people understand the sincerity of our efforts. We have learned from past mistakes and are correcting those mistakes. We remain committed to a naturalization service that is worthy of the stewardship of the greatest benefit bestowed by our nation.

#### *Operation Gatekeeper*

Concerning the allegations that apprehension statistics had been fabricated to enhance the apparent effectiveness of Operation Gatekeeper, the Office of the Inspector General's review of the Operation is still ongoing. We have not been provided a status report or any other information related to the investigation that can be shared with you today. However, I would like to refer to the Inspector General's testimony before the House Appropriations Subcommittee on February 26, 1997 in which he said that so far, he is "not finding the pervasive falsification of data or the distortion of procedures that have been alleged." When we receive more information in the form of a report, actions will be taken where applicable and appropriate. We will keep you informed.

#### FISCAL YEAR 1998 BUDGET

Now, I will turn to the fiscal year 1998 budget and initiatives included in our request. For fiscal year 1998, we are seeking a total budget of \$3.6 billion and 28,230 positions for INS to further strengthen the Administration's comprehensive immigration strategy. With this budget, the Administration will have increased INS funding by 142 percent over fiscal year 1993. The fiscal year 1998 budget represents a \$419 million increase in funding over the anticipated fiscal year 1997 spending level, including \$360 million in new initiatives, and adds a total of 1,570 positions.

The goal of the Administration and the focus of the INS fiscal year 1998 budget is to continue concerted efforts to control the Nation's borders and facilitate commerce while deterring and denying the illegal movement of people and drugs into the country. The fiscal year 1998 budget request includes resources to firmly and fairly enforce immigration laws and to implement the broad legislative changes enacted in 1996. Specifically, the fiscal year 1998 budget includes continued funding for strengthening border control, port-of-entry facilitation, enforcement initiatives targeting U.S. worksites, increased removal of deportable, criminal and other illegal aliens, improved processing of naturalization and benefits applications, and resources to renovate and update the basic INS physical and technological infrastructure.

#### PROFESSIONALISM INITIATIVE

Improving professionalism is my top priority for the Immigration and Naturalization Service. INS' fiscal year 1998 request includes a total of 83 positions and \$23 million to address the deficiencies in the infrastructure base and mission support. In recent years, the Service has expanded and intensified program activities in the areas of enforcement, deterrence and benefits. Program expansion, though, has placed a strain on the basic infrastructure of INS and the ability of the Service to assimilate thousands of new employees.

Under this initiative, INS will address those infrastructure areas that historically have been under-funded. This initiative encompasses a wide range of activities, including training for INS journeyman employees, resources to meet new Freedom of Information Act/Privacy Act requirements and support for the Statistical Analysis Program.

Nine positions and \$6.1 million are requested to provide training in field locations through the use of emerging technology keyed to a distributed learning environment. This effort will allow INS to provide continuous training for employees at or near their duty stations to reduce travel costs. These resources will allow for increased supervisory and managerial training within INS, a category of training which has been neglected in the past. This funding will also provide for individual career/professional development and for training requirements generated by legislation and regulatory and policy mandates.

Twenty-one positions and \$1.5 million are requested to support nationwide automation programs by augmenting the depth of support devoted to the various information technology and mission-critical programs of INS. The current industry standard is to have a ratio of 1 ADP specialist for 50 field personnel. The current INS ratio is 1 to 100. By the end of fiscal year 1998, INS hopes to improve this ratio to 1 ADP specialist for every 75 field employees.

An additional 37 positions and \$3.1 million are requested to allow the Service to comply with the provisions of the Electronic Freedom of Information Act Amendment of 1996 (EFOIA). These provisions include the Electronic Reading Room, man-

dated FOIA responses within 20 days, and elimination of all backlogged inquiries, which are currently at more than 15,000 cases.

The Service is committed to establishing a program of routine repair and maintenance of its buildings and structures, allowing for a healthy and safe work environment for all employees. One position and \$5.3 million are requested to establish this program.

Finally, the budget requests 15 positions and \$7 million to improve the INS Statistical Analysis Program. These resources will allow INS to keep pace with its increasing workload and expand the quality of professional analytical services provided to other program areas within INS, along with external audiences. The Statistical Analysis Program includes data on immigrants, refugees, non-immigrants, naturalizations, apprehensions and removals of illegal aliens, as well as productivity and resource management statistics regarding INS and its mission. Increasing requests for information from the Congress, GAO and the general public have created greater demand for this data. These resources will help make improvements in the timeliness, precision, usefulness and reporting frequency of our data.

#### BORDER FACILITATION AND CONTROL INITIATIVE

The fiscal year 1998 budget includes \$152.1 million and 845 new positions to sustain facilitation of entry and control at ports-of-entry and expand control between the ports-of-entry along the Southwest border. These funds will maintain the aggressive hiring and training efforts begun in fiscal year 1996 to enable the INS to surpass the President's goal of 7,000 Border Patrol agents by the end of fiscal year 1998. The budget request of \$62 million for 500 Border Patrol Agents and 50 support personnel, complemented by a corresponding increase in force-multiplying technological and other infrastructure enhancements, will enable INS to consolidate and expand on the progress achieved in recent years along the Southwest border.

The 500 additional Border Patrol agents will join those already patrolling the Southwest border in California, Arizona, New Mexico and Texas. The Border Patrol has achieved dramatic results in areas like San Diego County in California, and the urban El Paso area in Texas. Recent expansion of efforts into Tucson, Arizona, and the remainder of the Texas sectors, will continue and grow.

The fiscal year 1998 budget requests \$16.2 million in funding and one position for further development and deployment of the highly effective biometric identification systems (IDENT/ENFORCE) at most Southwest Border Patrol locations, and expansion to the northern and maritime borders, as well.

Also included in the request is \$34.3 million to provide critically needed maintenance, renovation and replacement of older Border Patrol facilities along the Southwest border, funds for planning and designing future construction projects, and resources for 11 military engineering projects supporting the Border Patrol through construction of border lighting, fencing, vehicle barriers and roads.

The fiscal year 1998 budget includes \$19.4 million for 277 Immigration Inspectors and 12 support personnel for air ports-of-entry. These positions will improve facilitation by continuing the processing of passengers through primary inspection within the 45-minute standard, and to staff two new airports in Palm Springs, California, and Medford, Oregon; and preinspection operations in Halifax, Nova Scotia. In addition, four positions and \$2.5 million are requested to expand the departure management initiative at air ports-of-entry, which will allow INS to deploy automated Form I-94 equipment to 300 inspections booths, and expand the joint INS-Department of State DataShare project to 10 new sites.

One position and \$17.7 million are requested for automation and reinvention of the inspections process at land, air, and sea ports-of-entry. At the land border, INS will implement a joint project with the U.S. Customs Service (USCS) to deploy license plate readers, new Treasury Enforcement Communications System (TECS) primary terminals, and other port permit technology. At air and sea ports-of-entry, INS seeks to install Interagency Border Inspection System (IBIS) imaging workstations at five sites and deploy 100 notebook computers to remote locations to allow for queries on INS' lookout database. The budget includes one permanent position and 11 contract positions to oversee the deployment of automated equipment at ports and increased funding for the IDENT and ENFORCE systems. We are also requesting resources to expand INSPASS, a system which speeds the entry of low-risk, frequent travelers at high-volume U.S. ports-of-entry, to 10 additional airports, and to deploy 100 carbon dioxide detectors at sea ports-of-entry to allow inspectors to more quickly and adeptly identify stowaways hidden in compartments on vessels entering the United States.

## REMOVE CRIMINAL AND OTHER DEPORTABLE ALIENS INITIATIVE

The President's fiscal year 1998 budget includes \$109.7 million to support 422 new positions to detain and remove criminal and other deportable aliens. We estimate that we will remove a significantly higher number of criminal and other deportable aliens in fiscal year 1998 as compared to the fiscal year 1997 target of 93,000. At this time, however, it is not possible to provide an exact estimate. Much will depend on how great an increase in operational efficiency the INS will gain from the new enforcement provisions of IIRIRA and the extent to which legal challenges alter or delay full implementation of the new law. The resources requested for fiscal year 1998 will increase INS detention and removal capabilities and allow the agency to better respond to the detention requirements of IIRIRA and sustain INS' current efforts toward removing non-criminal deportable aliens. The INS will increase the amount of detention space and removal resources by 3,000 beds, bringing total INS detention space to over 15,000 beds.

Included in the request are 181 positions and \$48.3 million to increase detention capacity as follows: (1) 119 positions for an expansion of 300 additional beds for the Buffalo Service Processing Center; (2) 300 beds for the Krome Lockdown Facility, which is part of the Krome Service Processing Center; and (3) 30 positions to staff an increase of 400 detention beds in the San Diego area. For non-INS state and local bedspace capacity, the request includes \$6.9 million for 95 beds and alien removal costs and 14 beds for juvenile detention. In addition, receipts from the Immigration Detention Account are projected to support 1,136 additional state and local bedspaces in fiscal year 1998. Of the amount requested, 24 positions and \$2.6 million will provide legal support generated by the additional workload and an additional eight positions to provide administrative support.

The fiscal year 1998 budget request includes 36 positions and \$12.1 million for detention and deportation personnel to locate and remove deportable aliens who have completed the appeals process. These resources will also fund an additional 230 beds. Four positions will provide the necessary attorney and legal support to try cases, prepare briefs and ensure all legal requirements are met throughout the process. In addition, two support personnel will provide management and administrative functions for hiring, training, and procurement of the additional equipment and staff.

A total of 90 positions and \$20.6 million is requested to expand the Local Jail Program. Of these, 34 investigative positions will manage the interview process and identify deportable aliens who are incarcerated in local and county jails. This expansion requires support by 46 detention and deportation personnel. Four attorneys and two legal support personnel will review Orders to Show Cause, prepare cases before Immigration Judges, and perform other functions related to immigration hearings. Four support personnel will provide management and administrative support for this initiative. In addition, resources are included to acquire an additional 375 bed spaces for this initiative.

The budget requests 43 positions and \$5 million to respond to the increased number of queries at the Law Enforcement Support Center (LESC) and provide a permanent source of funding for the LESC. In addition, resources requested will fund a total of 36 temporary positions to perform status verification in response to queries from other law enforcement agencies.

A total of 66 positions and \$9.5 million will expand criminal alien record holdings in the FBI's National Crime Information Center (NCIC). The INS will install NCIC terminals in 45 additional locations nationwide and increase the number of records, including records in the Deported Felon File. New personnel will code, validate, audit and conduct quality control of the data being entered. Resources will also provide an additional 150 bed spaces and three attorneys and one legal assistant to assist with the deportations resulting from the expansion of the NCIC. Three support personnel will perform the management and administrative functions related to this initiative.

Finally, the request includes \$14.2 million in funding for new construction and renovation of the Krome and Port Isabel Service Processing Centers as well as planning and site design resources for the El Centro, Florence, Varick Street and additional Port Isabel renovation projects.

## INTERIOR DETERRENCE INITIATIVE

The fiscal year 1998 budget includes \$21 million to support 156 new positions for worksite enforcement, employer compliance and verification services. This initiative will expand efforts to deter illegal employment and increase investigation and prosecution of employers who intentionally violate immigration and labor laws. These funds also will promote compliance by providing information support to employers

and employment verification services. The budget request also will fund expansion of employment verification pilot programs required by statute to allow employers to quickly verify the employment eligibility of newly hired employees.

The budget request includes 73 positions and \$7.8 million to increase targeting of major violators by pursuing those employers who: (1) employ unauthorized aliens and violate criminal statutes such as document fraud, smuggling, harboring, induce-ment and slavery; (2) violate other regulatory requirements such as labor laws; or (3) continually depend upon unauthorized labor. In addition, these enforcement resources will be used to develop capabilities to better target sweatshops and other abusive employment situations. Thirteen detention and deportation positions, 12 attorneys and four support staff, are included to aid in the removal of aliens when the initiative is fully implemented.

The budget includes 14 positions and \$1.2 million to establish a national telephone bank to respond to questions on the employment eligibility process, employing permanent and temporary foreign workers, changes in employment-related immigration law, hiring foreign students, independent contractors, asylum-based work authorization, hiring under NAFTA, hiring nannies and domestic workers, and the retention of documents. In addition, an employer Internet service will be established for employers that will provide an easy-to-use, cross-referenced information source for employers.

Employment verification allows employers to quickly verify the employment eligibility of a newly hired non-citizen. Twelve million dollars are requested to fund 69 technical and clerical positions and expand the verification pilot programs to include additional participants and a variety of verification approaches. The enhancement will also provide resources to continue to improve immigration records supporting verification, to design and deploy improved verification business practices, and to re-engineer existing business practices that support welfare reform legislation enacted in 1996.

#### IMPROVING SERVICES AND BENEFITS INITIATIVE

We will also improve customer services for legal immigrants by continuing and improving the Citizenship USA naturalization initiative and increase staffing and automation for other benefit applications. The INS is requesting a total of 64 positions and \$54.3 million to improve INS services and support components to better serve customers. These resources also will allow INS to keep pace with the expected fiscal year 1998 workload of approximately five million applications, including more than 1.6 million for naturalization, and to meet the challenges posed by new legislation and the increased demand for a broad range of immigration information.

The Service's customer base has been growing rapidly; however, the records and information infrastructure has not kept pace with this growth. The Service requests four positions and \$15.6 million to implement an information network for records restructuring and centralizing existing files in preparation for the transition to electronic filing and electronic immigrant files (A-Files). The records centralization proposal incorporates a national and comprehensive data improvement strategy to improve data integrity for the Service. This initiative also includes resources to provide a catastrophic backup capability for the IDENT system.

The Service is requesting \$13.8 million in resources to enhance its centralized computer-based information repository, the Central Index System; enhance the fingerprint collection and clearance process to have the capability to electronically capture, store and eventually transmit fingerprint data between the INS and the FBI; and expand the current telephone improvements efforts and establish a sole 1-800 line that will act as a front-end to all non-enforcement related inquiries.

We are also requesting 50 positions and \$3.4 million to create a corps of representatives in district offices to strengthen customer and community relations and provide customer relations training to INS service-related employees. The budget also includes \$1.7 million in funding to expand the Direct Mail Program to the San Francisco, Newark and Baltimore Districts. These modifications will allow INS to more effectively process naturalization applications and gain control of the massive records workload in those districts. The resources associated with this transfer of naturalization cases will provide for additional records contract support in the Service Centers, and for mail, file, and data entry operations. In addition, \$1 million is requested to fund a contractor study of the demographic aspects of the INS customer base to determine if the current location and configuration of INS offices meets customer needs.

The budget request includes \$2.6 million to support ongoing direct mail initiatives and fund the increased volume of FBI fingerprint clearances and naturalization

ceremonies. In addition, a total of 10 positions and \$4.4 million is requested to improve Service responsiveness to the customer's needs for forms and information.

A total of \$1.8 million is requested to provide comprehensive reception and settlement services that could not be accommodated through base funding for the 15,000 Cuban nationals anticipated to arrive in the United States in fiscal year 1998 through the Cuban legal migration program.

The budget requests \$4.2 million to provide for the deployment of a naturalization module to Service Centers through the modification of the CLAIMS system. In addition, \$1 million is requested to expand the case scheduling functions now available in CLAIMS at the Service Centers.

The budget request also includes \$4.8 million to continue the local office record contract concept to maintain pilots in seven district offices. Finally, the adjustment of status provision of the Immigration and Nationality Act expires on September 30, 1997. By requiring a substantial fine for adjustment of status, Section 245(I) penalizes individuals who may not have had legal immigration status but who are now legalizing their status. We project that revenue from 245(I) receipts will enable us to fund 1,136 detention beds in fiscal year 1998. Our budget request includes language to repeal the sunset date so that we can continue to receive this revenue.

#### CONCLUSION

These new fiscal year 1998 resources will give INS the personnel and tools needed to carry out the effective immigration strategy begun four years ago. I look forward to continuing to work with the Subcommittee, and with your support of this budget request, we can carry forward the momentum of the last few years to make our immigration system the best it can be. As I mentioned earlier, I want to work with you to alleviate your concerns and build your trust so that the many accomplishments over the past four years are not overshadowed by the few mishaps we have encountered along the way.

This concludes my formal statement on the 1998 budget request for INS. I would be happy to answer any questions which you, Mr. Chairman, and Members of the Subcommittee may have.

Senator GREGG. Thank you, Commissioner.

I think we will limit questions on the first round to 10 minutes. I know that Senator Hollings has an amendment on the floor, so why don't I yield to you, Senator?

Senator HOLLINGS. That is all right. You go ahead.

#### COOPERATION BETWEEN FBI AND DEA

Senator GREGG. All right. Why don't I start with you, Director Freeh, on a couple of questions? First, since we have you and the folks from DEA here and even INS, I would be interested to know what sort of structural efforts have been made to cooperate? I know that you and the Administrator work very hard to cooperate. This was a big problem for many years, the lack of cooperation and the turf fights that had occurred between the different agencies. I am wondering what sort of structural, systematic programs have been put in place to survive personalities so that we have long-term cooperation.

Specifically, if you could comment on this, Administrator: as we build the new building for you in Quantico, which is a separate building for DEA, one of the advantages, I think, has been that DEA and FBI agents have been trained together at Quantico. They have gotten a personal relationship there that, hopefully, they can build on throughout their career, and, therefore, it cuts down on turf fights. Is there going to be a formal effort made to continue to interface and mesh the early relationships that can evolve over time?

Mr. FREEH. Senator, just let me answer part of it, and I am sure the Administrator can supplement this. The relationships between

the agencies are really outstanding, and I do not say that without a lot of sincerity. When I came to this job, I found out that the former Director and Administrator used to make appointments to speak to each other, which is not a good way to communicate anywhere, but particularly in Washington for two law enforcement agencies.

We have by our own very close personal and professional relationship, set a very important tone and message for our field divisions. Every SAC in the FBI and the DEA know that the Administrator and I do not want to hear about people in the field or headquarters fighting or not getting along about things which have to do with our simple unified mission. People know that there is a great expectation that that will not occur, and for the most part, it does not occur.

Structurally speaking, we have done a number of things to ensure that this relationship, which is better now than it has ever been, is perpetuated. We have exchanged, for instance, very high level SES members. For instance, the former head of the intelligence unit at the DEA, who just retired, was an FBI agent. The individual who was the principal FBI official responsible for drug and organized crime programs, until he retired, was Doug Wankel, a senior DEA agent. These are people who had line authority in both agencies.

We have several field offices where FBI supervisors or DEA supervisors are in charge of particular projects where both FBI and DEA agents work together. We have a very successful operational program, which I think the committee is aware of, where we fund together and work together and have collocated together to give us the intelligence, particularly along the southern tier, to put into effect strong operations and good cases.

We have joint training. We have joint SAC conferences. We interchange and work directly on legislative matters, and on budget matters. There have been times when I have asked committees to give support and resources to the Drug Enforcement Administration, even though those would be taken away from the FBI. So the relationships, I think, are very good. I think they are being institutionalized.

Perhaps Mr. Constantine can talk about the training academy. We have structured this new building at Quantico in a way that we will fully utilize it for both agencies, and it is not going to, in my view, put any separation between us.

#### DEA AND FBI TRAINING AT QUANTICO

Mr. CONSTANTINE. Well, it is tough for me to say what the relationships were like before I came to Washington and to the Federal Government. Before coming to Washington, I had heard things. I come from an experience in law enforcement where it is essential for agencies to get along with one another merely for their own physical survival. In many instances, since I have been here, I have not had a conflict with anybody in the law enforcement community, and I think we have worked out a number of issues that may have existed before, especially involving maybe the DEA and the FBI at the level that they do not presently exist.

Insofar as the academy is concerned, we recognized—and the Attorney General has also recognized the need for more space. We will still share many of the joint facilities. The firearms range, the practical training area, and the emergency vehicle operating course, will be shared.

We have formed committees to ensure that we share the faculty of both DEA and FBI training staff and so that we can exchange them where each has an area of expertise. We will be establishing joint evening training sessions for FBI and DEA agents so they carry with them the same types of experiences. I think the fact that they now have space, each of them, to be trained and now have an ability to keep the major buildings at Quantico in good shape, the library and the gymnasium, I think will be to the benefit of both agencies.

I have also seen from young managers in the DEA that I deal with directly, a sense of cooperation with the FBI, and all of the other agencies. They recognize that the people of this country are very concerned about crime and drugs, but they are also concerned about their tax dollar. The last thing that they want to hear is that a bunch of bureaucrats in agencies are fighting with each other over whose name is in the paper or who gets credit for something. And that is a message we send continually, and I think it is working.

#### INTERAGENCY COOPERATION

Senator GREGG. Thank you.

Do you have any comments you want to make on this effort of interagency cooperation?

Ms. MEISSNER. I would simply add that the Immigration Service participates very directly in the same spirit that has been outlined here, most importantly in joint task force efforts among the Federal law enforcement agencies. Our added value is the authority that we have. Obviously, where noncitizens or illegal aliens in the country are concerned, our efforts often converge with crime initiatives that the FBI and the DEA are in the lead on. At the Southwest border, we are the first line of defense where drug trafficking and other criminal endeavors might be concerned. That relationship has worked very, very effectively.

#### BORDER CONTROL

Senator GREGG. What percentage of the people that are coming into the country illegally do you feel you are actually apprehending?

Ms. MEISSNER. Well, that is difficult to say. The really critical thing about what has been going on in the last several years and what is being demonstrated on the Southwest border is that we are beginning to achieve control and deterrence. The best enforcement, where illegal immigration is concerned, is preventing it from occurring in the first place. And what you have now in California, in an area that had accounted for one-half of the illegal crossings into the country historically, is basically, we estimate, about 85 to 90 percent control.

Senator GREGG. If you had that estimate in California, what is your estimate for, say, New Mexico, Arizona, and Texas?

Ms. MEISSNER. Arizona is coming along very, very well. I would not want to give you an estimate right now without checking some numbers. It is clearly not 85 to 90 percent, but it is getting close. The investments in Arizona have been outstanding. We have work yet to do in Douglas, AZ, where we are just about to build a fence which will give us the missing piece that we need to support the personnel we have put there. Our major efforts now are to shore up Texas and to counter the movement of traffic that has occurred because of the efforts we have already made in Texas, particularly in El Paso, where we are seeing spillover into New Mexico.

We are adding resources there as quickly as we can, consistent with providing the infrastructure, equipment, and technology that is required to put a comprehensive effort together. We think that in the next 2 to 3 years, as we continue to build the budget and build the effectiveness of the strategy, that we will have stable border control along that Southwest border.

Senator GREGG. So you think within 2 or 3 years we will have stable border control along the entire border of Mexico?

Ms. MEISSNER. That is what we foresee at the present time.

Senator HOLLINGS. You think that is going to happen?

Senator GREGG. She is from Maryland. Those of us from the Northeast, we do not know.

Ms. MEISSNER. You really need to see California. I really hope you will be able to come.

Senator HOLLINGS. I have been to California. Have you cut out the checkpoints 50 miles inland? Are you still doing that?

Ms. MEISSNER. No; checkpoints are extremely important. Checkpoints, particularly in—

Senator HOLLINGS. They do so good that you put them 50 miles inland and try to catch them a second time?

Ms. MEISSNER. No, no. You need checkpoints because of the organized movement of aliens, which is increasingly the problem as we become more effective with border control. You simply have areas, particularly in more remote locations, where it will never be cost effective to have the concentration of Border Patrol that we have in the heavily trafficked areas. Therefore, we have to close off the transportation routes into the interior of the country.

#### COORDINATION BETWEEN INS AND FBI

Senator HOLLINGS. Well, with respect to the coordination being so superb, what about the coordination between Immigration and FBI? As I understand it, a lot of the so-called immigrants came in at election time without the proper background checks, and you sent over fingerprints to the FBI asking that they be given checks within 60 days, and when INS did not get a response from the FBI in 60 days and the aliens were naturalized. Turns out many had criminal records. Where is the coordination there?

Ms. MEISSNER. Well, I think that we have all recognized that the workload faced as an agency in the citizenship arena in the last 2 to 3 years was absolutely unprecedented. We have seen doubling and tripling of the caseload of people applying for naturalization, and that meteoric rise is continuing.

We have simply not had the infrastructure, either in the FBI or in the Immigration Service, to effectively handle the fingerprint

checking pressures that the caseload requires. We recognized several months ago, in the fall, that although there had been a great deal of contact and communication at the working level on these issues, they had not received the level of senior management attention that they deserved. The FBI and the INS, certainly since September, and very intensively since then, have been engaged in this effort, and we are finding solutions.

Senator DOMENICI. Would the Senator yield?

Senator HOLLINGS. Yes.

#### NATURALIZATION EFFORTS

Senator DOMENICI. Let me just ask you about this subject, and let's be specific. How many felons did you go ahead and let become American citizens in that extraordinary let's hurry up and create a bunch of citizens so they can vote episode? How many felons did you let in, and what are you doing about that?

Ms. MEISSNER. Well, let me first say that this was not a let's hurry up and let them vote effort. This was an effort to be timely with an unprecedented caseload, a doubling and tripling of the caseload that we had been given to handle.

Senator DOMENICI. Call it what you may. How many felons did you let in?

Ms. MEISSNER. We have undertaken an audit of the entire caseload of decisions that we made last year. That audit is taking place under the guidance of an outside accounting firm. At the present time, we have identified 168 cases of individuals that were improperly naturalized because of criminal backgrounds. There will probably be a slightly larger number than 168 cases when the audit is complete. The audit will be completed within the next 2 months. Those cases that were improperly naturalized will all be subject to revocation. The cases are out of 1.1 million people that were naturalized.

Senator DOMENICI. Thank you for yielding, Senator.

#### CONSTRUCTION OF FACILITIES

Senator HOLLINGS. Yes; I wanted to get those same figures. The FBI is building a new \$130 million FBI laboratory at Quantico, and yet the DEA is asking separately for \$25 million, Mr. Director, to reconstruct their own aging labs, and Treasury has got in another appropriations bill a \$55 million request for another lab for the Bureau of Alcohol, Tobacco and Firearms.

Senator MIKULSKI. The ATF.

Senator HOLLINGS. Yes; what about that coordination? The Vice President set up the so-called DIAP, the Department of Justice coordinating position or Director for Investigative Agency Policy, but I do not know what they are coordinating.

Mr. FREEH. With respect to the laboratories, this issue came up, actually, well over 1½ years ago. As the Director of the Office of Investigative Agency Policies, I specifically tasked the agencies to sit down and talk about the existing laboratories and the ones which were proposed to make sure that there was coordination. And the question I asked is: Should we have one laboratory where we have the FBI, DEA, and INS together? The experts went out and studied that. They came back and unanimously recommended

to myself and the Attorney General that it would not be cost effective to combine FBI, DEA, and INS laboratories. So based on that study, we did not put a consolidated lab together. We certainly did study it and very carefully looked at that possibility.

Senator HOLLINGS. Well, Ms. Meissner, with respect to the Charleston Border Patrol facility, we are turning out some 1,600 Border Patrol agents per year down there. I happen to know that they are really enthused about it. It is working extremely well. But, again, for the coordination financially, they got a request up at Treasury for another \$14 million for duplicative facilities down at Glynco when the existing school is working well.

Now, I asked from the Government standpoint why waste the \$14 million per year when the Charleston Border Patrol Academy is working extremely well. I can use it for taxpaying entities to go in there, so it is not a parochial interest in a sense, and yet it is in the Government's interest. Do you know about that? Do you know any reason why we ought to start building another school when you have one working extremely well in already established Government facilities?

Ms. MEISSNER. I am sorry. I cannot speak to that request. That is, I believe, a Treasury Department request, because that is where the Federal Law Enforcement Training Center funds come from.

Senator HOLLINGS. But you pay the bill. We appropriated \$20 million for a firing range for the FBI, another \$30 million for training facilities at Quantico for DEA, and here we have got a bigger Border Patrol school for the cost of only \$8 million. And yet they are coming from Glynco and asking for another \$14 million per year to build another school down at Glynco.

Ms. MEISSNER. I cannot help you with that. What I can tell you is that the Charleston facility has, as you said, been an extremely positive effort. It has been and continues to be a vital resource for us in meeting the requirements that we have for bringing very large numbers of Border Patrol agents into the Service, and we are very pleased with the outcome of that effort.

#### FBI LABORATORY

Senator HOLLINGS. Director Freeh, what about this statement in the Washington Post to the effect that McVeigh and the Oklahoma bombing has gotten its biggest break when the Justice Department investigation showed shoddy practices at the FBI crime lab, and another Post story that the FBI learned of serious inadequacies in the lab nearly a decade before the Justice Department inquiry documented the failings there?

Mr. FREEH. Senator, it is hard to comment on the *McVeigh* case because the judge, as you know, has an order against that and it is a pending matter. I read what has been in the newspapers. I have certainly heard what the defendants' attorneys have said. I am confident, having spoken to the prosecutors, that the case and the interests of the U.S. Government have not been compromised by anything and that the court will fairly determine any claims that anybody has.

As to the second part of your question, the inspector general's report, which will be out next week. It will comment and very care-

fully track the history of prior problems or allegations in the laboratory going back, I think at least to 1989.

Senator HOLLINGS. Well, what do you know, though, Judge? The Justice Department has identified at least 50 criminal cases where evidentiary problems created by questionable forensic analysis by the FBI laboratory may have resulted in improper prosecutions. That is Deputy Attorney General Gorelick's quote.

Mr. FREEH. Yes; I think she later said in some detail that they identified 50 cases where issues had been raised and matters have now been raised which, in due diligence and because of our Brady obligations, should go to prosecutors and ultimately to defense lawyers to make any motions. I do not know of any FBI case that has been compromised by any of the matters which are addressed in that report. I think what she said very clearly is that this was not only a required but a prudent move by the Department of Justice to make sure that if there is any evidence relating to a prosecution or a conviction, that defense lawyers with a view to making a motion have it. But that does not mean, in my view, that 50 cases have been compromised. It means in 50 cases there is a possibility that some information in the prosecutor's view and ultimately the judge's view might be relevant to a motion, and I do not think it—I certainly know it does not mean that there are problems with 50 cases.

#### CERTIFICATION OF MEXICO

Senator HOLLINGS. In my limited time, one more question, please, Mr. Chairman. Over on the House side, Mr. Constantine you testified, and I quote:

I think it is also important to say that despite the fact the Government of Colombia was decertified, the United States Government, and particularly the Drug Enforcement Administration, recognize the enormity of the challenge faced by the Colombian National Police as they work hard to defeat the Cali mafia. I have expressed deep admiration to the head of the Colombian National Police, General Serrano, and have commended him and the chief prosecutor, Alfonso Vallievaesio, for their exemplary commitment in the face of grave obstacles. Both are true heroes in the joint struggle in which we are engaged.

Now, if you have heroes in Colombia and ne'er-do-wells down in Mexico—I believe you said you could not trust anybody in the police operations down in Mexico—why is the United States Government certifying Mexico and decertifying the ones that are making heroic efforts. How do we explain that?

Mr. CONSTANTINE. Well, I think as I have mentioned in much of my testimony, I do not certify or decertify, nor do I make a recommendation of certification or decertification.

Senator HOLLINGS. So you are not responsible?

Mr. CONSTANTINE. Well, I would not say that. I give people my analysis of the facts on law enforcement cooperation.

Senator HOLLINGS. Who is responsible? If you do not do it, who does?

Mr. CONSTANTINE. Well, those decisions are mostly made by the State Department and other people who look at a whole host of policies. But those statements that you read were my admiration of the police officials and prosecutors in Colombia.

Senator HOLLINGS. Well, if Colombia's national police are doing an outstanding job, we ought to make a public record of it and let

them know rather than decertify them. If they are taking their lives in their hands trying to help the United States, whereas we are not getting the help down in Mexico, something isn't right here. I think we have got it backward. We ought to be certifying Colombia and decertifying Mexico.

Thank you, Mr. Chairman.

Senator GREGG. Do you want to comment? Or was it not a question?

Senator HOLLINGS. That is all right.

Senator GREGG. Senator Campbell.

Senator CAMPBELL. Thank you, Mr. Chairman.

There is one thing I think these agencies all have in common, and that is that as they apply pressure in one area, the problem seems to move along the line of least resistance. And I am not sure where we are going to resolve it, whether it is drugs or immigration, until we deal more with demand rather than supply. It seems to me if you cut down the demand, then you begin to cut down supply. But I thank them for appearing.

I have no questions of Director Freeh except to thank him for the effort he has gone to to make sure that our G-7 conference in Denver is going to be done safely. There is some concern, obviously, in our State with the heads of seven countries in conference there and the *McVeigh* trial going on at the same time. The security has become kind of a major question for many of our folks in Colorado, so I thank you for that.

#### HIDTA FUNDING

I do have a couple of questions, one for Administrator Constantine, though, and that deals with the high intensity drug trafficking areas [HIDTA] program. Congress established a HIDTA program in Colorado last year, and I think it has been pretty successful. I mentioned it in my opening statement, the number of arrests that were recently made, and I think HIDTA was active in that, even though they just really got off the ground in the last year. But originally we funded that to the tune of \$3 million. When we originally did that, we did not know that there was also going to be a branch in Laramie, WY, and a branch in Salt Lake City.

I met with the chiefs of police of the six metro areas around Denver a couple of weeks ago, and I asked them their feeling of the HIDTA program, and they were very, very supportive and very happy that it had been established there. But they did think, since it was now divided into three areas, that the funding level was not enough to be able to do what they wanted. And I would ask if you could respond to that.

Mr. CONSTANTINE. As the HIDTA program has developed, there seems to be an enhancement of the money in the out-years. In the original authorization and appropriation of money, it is really difficult to project how successful it is going to be, how receptive the local chiefs and sheriffs are going to be to a HIDTA program, what are their needs in technology, what are their needs in buy money for investigations or informant money, which is how most of the funds are used in the HIDTA program.

It is my experience, for example, in talking to Dave Michaud, the chief in Denver, and the various people from the Colorado Bureau

of Investigation and the chiefs of police in Colorado Springs that people are very receptive to the HIDTA program. There have been some major joint investigations, and they recognize the need for money because we are dealing, again, in Denver, with some powerful international organized crime syndicates who have come to Denver. And the same problem exists in Salt Lake.

My suspicion was that as we look at the budget this year and, I believe the budget authority for the HIDTA programs is in the Treasury-General Government Subcommittee, that there may very well be an enhancement. I would be glad to recommend the needs and issues that are developing in that tristate HIDTA, because they are often connected. The events that happen in Denver seem to have an effect especially in Wyoming and to a degree in Utah. And my suspicion is there will probably be enhancement in the out-years.

#### METHAMPHETAMINE STRATEGY

Senator CAMPBELL. You also mentioned the dramatic increase of methamphetamines, and you include some new funding in your request for expanding the work to target, investigate, and prosecute those folks that are in the labs. Is there anything you can tell us publicly about what you intend to do to expand that—I know there are some things you probably should not discuss publicly.

Mr. CONSTANTINE. Fifty-four of the agents that are in that program will actually go into enforcement groups which go after criminal organizations who are directing this activity, most often in the west coast States, the Rocky Mountain States, and in the Southwest. An additional number of agents will go into what is called the clandestine laboratory training program where we will train and, to a degree, try to equip deputies, patrol officers, and detectives in police agencies throughout the country, because often the investigation of methamphetamine trafficking results in a raid on a manufacturing site. The entry into the lab is very dangerous because of the chemicals that are being utilized and the lack of safety precautions for the people who are involved in the manufacture. In addition, a lot of the airborne pathogens in all of the material that is in these laboratories are very volatile and could blow up, and have, in fact, blown up on the manufacturers. So we will use a substantial amount of that money to train local law enforcement for those issues.

The third part will be in laboratory personnel. There will be an additional number—I believe the number is 12—laboratory technicians who will be available to assist in not only the investigation but the analysis of the evidence. When we seize heroin or cocaine, it has already been manufactured. The test is fairly easy. You can do a field test. You would have probable cause and get an indictment.

With methamphetamine or amphetamine, when we interrupt the process, it may be three-quarters of the way to becoming the actual drug. We then have to take that product to a laboratory, do a quick-turnaround laboratory test to be able to say in court that there is a level of probable cause or beyond a reasonable doubt that these chemicals are being used to make methamphetamine. We have had a 146-percent increase in our labs seizures alone in the

last calendar year, and police agencies in your State and in the Western States have had at least that, and maybe more. Much of that laboratory work tends to create an additional load on a laboratory. So that is where we will be spending that money.

#### ILLEGAL IMMIGRATION IN COLORADO

Senator CAMPBELL. OK. Thank you. One last question, Mr. Chairman, of Commissioner Meissner. I think, as you mentioned in your testimony, the INS is probably moving along and kind of come a long way, but I live kind of on the border of the Southwest, in western Colorado, and if our area is included in the Southwest border strategy, I would have to say it has not been a resounding success. The number of illegal immigrants in Colorado, and particularly western Colorado, has gone up by 100 percent in just 2 years. I am told by law enforcement people on the western slope of Colorado that when they stop vans, sometimes dangerous vans, unlicensed drivers and so on and they find illegal immigrants in it, they notify the INS as to the procedure they are supposed to use, and they are being told to let them go because there is no place to hold them. Is that correct?

Ms. MEISSNER. Certainly that is not entirely correct, but let me just start with the terms. We would consider Colorado and the problems that you are experiencing part of our interior enforcement responsibilities. In other words, obviously the border is the first line of response, and that is where we have put our highest priority effort. But what we are now seeing more and more of—Colorado has been a real hot spot in this regard—is changing transportation patterns and much larger groups of illegal migrants traveling together because of the success we have had at the border. In other words, there is far more smuggling now and far more desperate measures being taken by the smugglers to move loads of illegal immigrants.

The good news is that we are beginning to understand and focus on intelligence to the point that we are seeing the linkages. We are beginning to be able to trace back to where those people have crossed the border, and who they rented vans from for transportation. We have begun to put special operations into place. Operation Mountain Pass was a good example in Colorado where we did a major blitz to interrupt this kind of traffic. But we do not have the resources in the interior of the country yet to sufficiently interrupt that traffic, and that—

Senator CAMPBELL. That gets back to my original question. Are local police being told to let them go?

Ms. MEISSNER. Sometimes that occurs. We try very hard to prevent that. We are building up our detention capacity by leaps and bounds. We added 3,000 additional beds last year. This year, we are adding 3,000 more beds. We basically have doubled our detention capacity in the last 2 years in a combination of contract jail space, rented space, et cetera. But there are instances where we are unable to respond. We are reducing that as quickly as we can, and we hope to be able to get better and better intelligence in order to interrupt those smuggling patterns.

## FUNDS FOR LOCAL LAW ENFORCEMENT

Senator CAMPBELL. I am supportive of your budget request, which I understand goes up by about 100 percent in the last 3 years, and you have added about 5,000 employees. What I am trying to do is connect it to our local law enforcement, and I wanted to know if any of those funds are dedicated to local law enforcement or county sheriffs to help them with the problem?

Ms. MEISSNER. We do have new authorities under the immigration law that was passed in September to engage local law enforcement more directly, and we are working at the present time on what the respective roles and responsibilities between the Federal authorities and local authorities ought to be. We are in very close communication with local law enforcement, and we want to find the best arrangements so that we can respond to their needs.

## POLICY ON ILLEGAL WORKERS

Senator CAMPBELL. Can you just, in my last minute or so, explain the catch-and-release policy for illegal workers? Is the term used in INS for that, catch and release?

Ms. MEISSNER. I am not familiar with that term.

Senator CAMPBELL. Well, it seems to be what is happening. We are catching them, and you are releasing them. But there is no official term for that?

Ms. MEISSNER. Well, I should hope not. If we have run out of time, I will be happy to talk with you or your staff further about how some of these things work.

Senator CAMPBELL. OK. Thank you, Mr. Chairman.

Senator GREGG. Senator Domenici.

Senator DOMENICI. Thank you very much.

Senator MIKULSKI. Hello. I have to go to a hearing.

Senator DOMENICI. Senator, you go ahead.

Senator MIKULSKI. Well, no. I will go by the rules. I have to leave, so I would like to ask unanimous consent to place my—

Senator DOMENICI. Senator, you go ahead. I—

Senator MIKULSKI. No, no, Senator, that is fine. I will be happy to go. I just was not aware that is the way we were doing it. I really do need to talk to these two men about Baltimore and Washington. If I could just maybe ask one question about Prince Georges and—

Senator DOMENICI. Of course.

## FBI AGENTS IN MARYLAND

Senator MIKULSKI. I thank the Senator from New Mexico for his courtesy. You have just put 50 agents in Prince Georges County?

Mr. FREEH. Yes, Senator.

Senator MIKULSKI. And I want to thank you for it. Do you want to describe what your intention is to follow up? Because we have different kinds of border problems.

Mr. FREEH. There are currently five task forces in Maryland. What we found in speaking to Chief Farrell, as well as other local enforcement officers, is that the Washington, DC-Prince Georges border was particularly problematic in that a Federal infusion of

resources with some permanent followup was necessary to deal with the very unique geographical problem.

We assigned 50 special agents beginning on March 10 for a 60-day phase 1 period. Now, they are working directly and closely with John's people, and I think very successfully, from what I have heard. We are going to follow up that initiative either by continuing the presence of those agents or, in any event, it will be followed up by the formation of a permanent safe streets task force with Prince Georges County. We think that will give us an impact there that we have not previously had.

Senator MIKULSKI. What will the task force do?

Mr. FREEH. The task forces will focus on violent crimes, particularly directed to the people who are transiting in and out of the District committing crimes and transporting guns.

#### HEROIN USE IN BALTIMORE

Senator MIKULSKI. Well, we want to thank you for that because we have a problem in the Northeast corridor, just as our colleagues have problems with borders. We have I-95, which instead of being a corridor of opportunity, has become a corridor of death with trafficking in guns and drugs, which takes me then, if I could, to one question for Mr. Constantine. What is the heroin issue in Baltimore?

Mr. CONSTANTINE. Well, heroin in the United States has always—

Senator MIKULSKI. No, no; in Baltimore. Is it distribution, is it—

Mr. CONSTANTINE. There is a distribution and a usage problem in the city of Baltimore for some unique reasons. It has become one of the largest per capita groups of people addicted to heroin. I have heard figures of 50,000 people in the city of Baltimore addicted to heroin, which is virtually 1 in every 10, I think, close to the population base of the city.

It has always been a drug that has been focused in cities since the early 1920's. Heroin has been an addiction problem for poor people. Now you have this tremendously powerful infusion of heroin from South America and Colombia. So the purity rate is about 90, 95 percent.

Senator MIKULSKI. Mr. Constantine, I would imagine that this is the kind of conversation we should have privately about the Baltimore situation. I find that a shocking, a truly shocking and chilling statistic, because we are a port and major transportation. I did not know if we had become kind of the premier warehouse, distribution center, which would be a sad description in and of itself. I need to discuss with you the accuracy—I do not dispute the accuracy, but these very chilling numbers, and then what we see as a plan of action.

I know everyone talks about this as a public health problem, and I would agree with that. But it is also an enormous public safety problem.

To my colleagues, really, from the West and from the South, Baltimore was making it. I think so many of our cities were making it until we were just being overrun by drugs. We were just being overrun. And I do not place this all on immigrants, legal or illegal.

They come for two reasons. They either bring dreams, or they bring drugs. And I am on the dream side. So let's talk privately.

Mr. Freeh, thank you for everything and let's talk about that.

Thank you, Senator.

Senator DOMENICI. You are welcome.

Senator MIKULSKI. Thank you very much.

Senator GREGG. Senator Domenici.

#### NATURALIZATION OF IMMIGRANTS

Senator DOMENICI. Mr. Chairman, I am not sure which committee is going to have a hearing with reference to the huge legalization of immigrants that occurred in the year starting September 1995 and ending in 1996. I do not have enough time to go into it, but it is an extraordinary year in terms of how many people were made American citizens. I am not making any accusations as to why, but I think it is pretty obvious, from the little bit of records that I have, that when you try to do that, you make big mistakes and you end up with an immigration system that does not have credibility.

I would just add, of the cases that were reviewed by the—what is the name of the company that did it?

Ms. MEISSNER. Peat Marwick is the accounting firm that we are working with.

Senator DOMENICI. Peat Marwick Mitchell. Actually, the 2 percent or 168 immigrants which were found to be ineligible because they had felony records, that is not the whole story. There is 29 percent, or 2,800, that they have been unable to decide whether they qualify or not, and that is out of just a small total of 9,500 cases. So I hope everybody learned a lesson of not taking on more than they can handle, which seriously harmed the credibility and the reliability that the American people deserve from an agency that is supposed to determine whether somebody is of good enough character to become a citizen. I am going to let that go, unless you want to comment.

Senator GREGG. Senator, if I can tell you the status relative to this committee, we have sent to the INS an interrogatory, which we just received a response to last night. It is a very extensive response. It was an extensive interrogatory.

We may ask for further hearings on this issue. The Commissioner has gone through an extensive hearing process on the House side. We do not want to have to repeat what the House went through because we have got their information. We have that background. But the Senator's point on felons is an appropriate one. In fact, our number comes close to 10,000 felons being admitted. What their level of crime is is an issue as versus violent crime as versus some sort of other felony. So this is a major concern. It may be, after reviewing this documentation, we will ask for another hearing with the Commissioner on this. We have not decided. If the Senator from New Mexico sought such a hearing, we would certainly pursue it.

Senator DOMENICI. Thank you. Mr. Chairman, I have two sets of questions I am going to submit to Commissioner Meissner regarding the backlog the INS has and how they are handling it, and 10 questions with reference to the staffing on the entire border. Rath-

er than use my few minutes to go through each one, I am just going to submit them and ask that, whatever your timing is, they be answered. Are you asking for a couple weeks?

Senator GREGG. Whatever you desire and whatever the Commissioner feels——

Senator DOMENICI. Could you do those in 2 weeks?

Ms. MEISSNER. Absolutely.

Senator DOMENICI. OK. You are going to have the record open at least that long, aren't you?

Senator GREGG. Yes.

#### SPONSORSHIPS OF LEGAL ALIENS

Senator DOMENICI. Now, I want to talk a little bit about another subject. When we were engaged up here in this monumental job of reforming welfare, one of the side issues that we found had to do with legal aliens who came to our country under the sponsorship of American citizens who were supposed to be their sponsors. In the early days of that law, it was literally thought that the legal alien that was coming in would be a ward, not of the Federal Government, but a ward of the sponsor. When we finally, after decades of doing nothing, inquired, we found something startling: that over an entire decade, only 13 out of literally millions of such sponsor relationships had ever been adjudicated as improperly followed through by the sponsors. Out of millions, only 13 cases—which meant we had closed our eyes as to whether the sponsors were meeting their responsibility or had put them all on our welfare programs from Medicaid to food stamps, and a variety of things.

We think we have changed that for the future, and so I would like to ask just a very preliminary question regarding this. In our new law, affidavits of support are required for sponsored immigrants, which are legally binding on the sponsor so that their ward does not become a public charge. We put that in the law, and we said that to meet the responsibility, there could be public charge bonds. Those are the words, public charge bonds.

So I bring in some relatives from Italy who are old, and under our wonderful policy of family unification, we bring them in. I am supposed to be responsible for them, not our SSI program. Courts would never help us in our previous law, so Congress said I can meet my responsibility by putting up a bond.

I will ask you: How many people have been admitted under sponsorship arrangements since we enacted the new law? What is happening with reference to trying to get an enforceable relationship of sponsorship versus the legal alien? Are there any court challenges to our new statute? Could you give us some answers to those questions?

Ms. MEISSNER. I will give you what I know at this point, and I will provide some additional information.

The implementation of the provisions you have just cited is part of a whole range of regulatory requirements that we have in implementing the law. We have developed the new affidavit of support, the actual form, and it is, I believe, in the final clearance processes at OMB. Forms have to be approved.

We are writing the regulations. The regulations are not yet complete. They will then obviously go through a circulation and a com-

ment period as well. Until the new form and the actual regulations are published, we are not yet implementing the provisions. But that is on a very fast track, and we have a very aggressive effort underway on the entire regulation-writing front. We will be happy to keep you apprised how that is developing as we move along.

Senator DOMENICI. Mr. Chairman, I believe, as the appropriating committee for the ongoing operational budget for the INS, it is imperative that we see to it that this law is complied with, or we will be right back in the muddle. Somebody will—in 6 or 8 years—find that we have legal aliens here and sponsors will not be taking care of them, and then they will say nobody can enforce the law. We ought to be able to follow this policy pretty rigorously, and I urge that you do that however you can in the appropriations process.

Senator GREGG. I would be happy to get any suggestions the Senator has, and if the Senator has language he wishes to put in this bill to this effect, we would be happy to put it into the bill.

#### EFFECT OF WELFARE ACT

Senator DOMENICI. One last issue on which I would like you to get us some numbers. Currently there are naturalization waiting lists of over 2 years in some jurisdictions. After the welfare reform bill of last year, noncitizens had a grace period of 1 year to complete the naturalization process before being terminated from the welfare rolls. That is what I understand the law was.

Can you tell us or could you dig up the information as to how much of the influx in applications is due to noncitizens affected by the welfare reform bill?

Ms. MEISSNER. We will try to provide that information. It is not a question that we have asked on the naturalization form or that we ask in the interview. People apply for naturalization. They pay a fee in order for their naturalization application to be adjudicated.

There is no question that the incredible increase in naturalization applications that we are receiving this year and over the last 2 years has something to do with changes in Federal policy not only where welfare is concerned, but with the overall tightening of enforcement of the immigration law. But as to the extent to which we could disaggregate that within the application pool, I have some doubts. We will try.

#### REQUIREMENTS FOR CITIZENSHIP

Senator DOMENICI. I think we ought to know for the record that INS has already, Mr. Chairman, by regulation waived as part of expediting citizenship, the English requirement, and they are easing other barriers so they can take care of this backlog.

Ms. MEISSNER. Well, let me be clear. We do not waive anything unless there is a statutory basis. There is not an English requirement for the elderly, for people that are 55 years old and 15 years in the country or 50 years old and 20 years in the country. But we are certainly not waiving requirements without a statutory basis.

Senator DOMENICI. I did not think you were doing anything illegal. If you promulgated rules to do it, you probably found the justification in the statute.

Ms. MEISSNER. Right, absolutely.

## NATURALIZATION BACKLOG

Senator DOMENICI. I am raising this because in an effort to get these applications through, we are doing extraordinary things. Much of the blame is being placed for this big backlog on welfare recipients who want to become citizens. I think it would be helpful if we could find out how much of that is true.

Ms. MEISSNER. Well, we do know that we have very large numbers in our application pool of naturalization applicants who have been in the country 15, 20 years, a very long time of permanent residency. One could only ask the question why are we naturalizing them now. It has to do with changes in policy of which welfare policy changes are among the principal ones.

But I want to be very clear here, as I tried to be in my statement, that the effort that we have been making to handle naturalization applications is a response to historic levels of applications. These are applicants who pay for the service of having their applications adjudicated, and we have a responsibility to handle those applications in a timely fashion.

We also have a responsibility to do it with integrity and according to a process that is correct, and there is no question that we have had a systemic weakness that we did not foresee sufficiently. We have taken strong measures to address it. We now do a 100-percent fingerprint check. We are working daily with the FBI, and have implemented a whole series of measures to make that work more effectively. So we are committed to the proper balance between timeliness and integrity.

## DRUGS ENTERING THROUGH THE PORT OF ENTRY

Senator DOMENICI. My last question has to do with all three of you, but in particular to the two law enforcement gentlemen who are here. I thank both of you for your wonderful work and great coordination. Things are much better in terms of DEA working with the FBI.

What we are hearing on the border is that most of the drugs coming into the United States are not coming through some new-fangled airline system that is bringing them in. They are coming in right through our ports of entry; that is, they are coming in under the hoods of automobiles and trucks. Recently they found one vehicle where they had literally built a new metallic impoundment in the block of an engine so that they displaced some of the engine block and they stuffed that with heroin. Are we putting in modern equipment? Are we engaged in an operation to modernize these ports and their techniques and capability? This is the biggest way illegal drugs are coming in. Could you just give us a quick observation?

Mr. CONSTANTINE. If you are talking about people in interdiction, you are really talking about Customs enforcement and port inspectors.

Senator DOMENICI. Yes.

Mr. CONSTANTINE. About 80 percent of the successful hits are intelligence-driven. That means usually there is an investigation, in the United States, or a DEA or FBI agent overseas who has an in-

formant or a major investigation involving a wiretap who is able to predict the plane, the ship, the car.

One of the things that we know is that a substantial amount of the cocaine on the Southwest border is coming through in either personal vehicles or large transportation vehicles. And it varies from building what we call traps in the trunks of vehicles that would be not easily found on a cursory inspection, or something as elaborate as taking the tanks and refinishing the inside of those and filling them with cocaine.

I have talked with Mr. Weise, the Commissioner of Customs, and the head of the Coast Guard, and they are spending a substantial amount of money in research and development to come up with some types of scanning devices that are able to pick up the chemical or radioactive specific properties of specific drugs. You have probably been there, too, Senator, at many of these border crossings, where there are hundreds of thousands of vehicles or trucks coming across every day.

Picking which vehicles to search is approximately 80 percent intelligence-driven. But you still frequently need these types of technologically advanced searching devices. Probably the Customs officials would be the best to answer that, but I know they are working on it.

Senator DOMENICI. I think so, Mr. Chairman. Maybe I could ask Customs.

Senator GREGG. What is your chance of developing that system?

Mr. CONSTANTINE. I am not an expert. I have listened to people in Customs as they have discussed the things that they are working on. They seem to be hopeful that they will be able to find some types of devices, especially along the border, for the most part in commercial cargo. They hope to be able to scan the whole box on a tractor trailer and then pick out a correct hot spot for secondary inspection. But I have not seen a demonstration of it, and to tell you the truth, it is just a skill that is beyond my present capacity.

Senator DOMENICI. Thank you very much.

Senator GREGG. Thank you.

Senator HUTCHISON.

#### ILLEGAL IMMIGRATION AND DRUG ENFORCEMENT IN TEXAS

Senator HUTCHISON. Thank you, Mr. Chairman.

I have heard a lot of frustration here. Count me in as frustrated. I am almost hopeless about our situation in Texas. We have an estimated 500,000 illegal immigrants in our State. We are now becoming the center for the entrance of drugs. When I talk to ranchers in our border areas, they tell me stories about not being able to go out on their lawns without a gun because they will meet someone with an AK-47 in their front yard. Customs agents on our side tell me that they are told to look the other way as someone brings in cocaine and heroin, and if they do not, their relatives in Mexico will come to harm or death.

Now, my concern is great because I do not think we are doing enough to solve the problem. I appreciate, Mr. Constantine, that you came to my office, and you are trying to address my concerns. I do appreciate that. But the facts are California has 140 miles of border; Texas has 1,200 miles of border. And yet there are 265

DEA agents in all of Texas in one Houston office; in San Diego, CA, they have 147; and in Los Angeles, they have 261. We have the same number of DEA agents for 1,200 miles of border that they have in just the Los Angeles office, for 140 miles of border.

Now, I am not against California having help because it too is a transit area for drugs and illegal aliens, there is no question. But it is time to start with a fresh slate. It is time now that we had some accommodation on 1,200 miles of border, Border Patrol agents.

Ms. Meissner, we have authorized 1,000 new Border Patrol agents. Last year most of the newly developed agents went to California, even though McAllen and El Paso have more drug—\$2 billion went through McAllen last year. McAllen is now the second highest sector in the number of illegal aliens apprehended and in marijuana coming across the border. We deserve and need more Border Patrol agents.

So forgive me if I am harsh, but it is not complying with the law to come in with a budget for only 500 agents, especially at a time when we have been shortchanged in Texas. And I am not saying take anything from California. I am just saying go the full 1,000 and give Texas its fair share. In some places, we have fewer Border Patrol agents today than we did 5 years ago.

My question to each of you is: What are you going to do about this huge inequity at a time when we are being overrun with illegal aliens and with drugs that are not only coming into the country through our sectors—which Senator Domenici correctly pointed out is the main source, but people who live in the remote areas of Texas fear for their lives. When I go to Alpine, when I go to Marathon, small communities that do not have the resources in their county budgets to deal with a drug dealer, that is where these people are defenseless. It is almost a lawlessness on our border. It is like the old frontier days. We do not need Judge Roy Bean, but we do need help from the Federal Government.

So I am going to ask each of you to address these concerns. Tell me what your plans are that will make me at least be able to go home with a straight face and tell my constituents that we are doing all we can.

Mr. CONSTANTINE. I will go first. I share your frustration and your concerns. I have testified up here again and again as to the scope and power of these criminal organizations. I do not think anybody should underestimate their ability to corrupt and intimidate law enforcement on both sides of the border.

We have seen a demonstration of what their impact is in Mexico. I think we should be very careful to recognize the fact that, given the amount of money and power that they have and the ruthless attitude that they have toward life, I see no indication that they would respect our borders.

I have been to McAllen. I have been to Rio Grande City. I have been to Laredo. I have been to Alpine. And I have sat with the ranchers in Eagle Pass where, in effect, the border probably has the potential to disappear because people who own ranches along the Rio Grande River are afraid to go down to their boat dock for fear that they will see a murder or see a body and become a wit-

ness, and by becoming a witness that they will become vulnerable and will be exterminated.

What has happened is they have put their property up for sale, and we find that there are shell corporations from the traffickers purchasing the property. Once that happens, there in essence is no border as far as drug trafficking is concerned.

I can only speak for DEA. Virtually every available major enhancement that I have been able to get—really, I have not gotten it; you have given it to me, both the House and the Senate—has gone to fight these major trafficking organizations. I have done that and filled those agent vacancies before I have filled them in New York or Chicago or Philadelphia.

We recognize that there are powerful organizations that infiltrate the United States in Texas and in California, and they are equally as powerful and equally as dangerous. And to move the resources out of one place and to put them over in another place will only, as somebody mentioned, open the opportunity for the damage to continue, the damage to continue unaddressed.

So the last two budgets that we have put in have requested major enhancements in Texas and in California and New Mexico and Arizona, and virtually every operational dollar that I can find for translation costs, for wiretap investigations in the United States has been directed against these entities. If you look at the actual budget, probably 20 to 25 percent—and that is a lot of money nationwide or worldwide for operations—has been addressed in those four States, including Texas.

So I share your concern. I have testified again and again that these criminal organizations is not a border issue. It is a criminal organization issue, Senator. They have to be addressed and they have to be addressed very vigorously. And that is what we have tried to do.

Senator HUTCHISON. Mr. Constantine, before I go to Ms. Meissner, two of the three largest drug cartels are operating in Juarez and Matamoros, across from McAllen and El Paso. You have your agents in Houston. Is there any hope that we are going to be able to see some movement toward those areas where we are looking at two of the largest three. Clearly the resources—I understand what you are saying about the resources, but the resources have been allocated in a very inequitable way. And I am not saying move them, but I am asking what you are going to do to have some equity here for the key areas. You talk about moving them causing problems, but the lack of help in these areas is also causing that to become a bigger problem.

Mr. CONSTANTINE. Maybe I can help, and maybe I have not been clear. The enhancements in Texas and California for the last 3 years have been similar in numbers and percentages. We have offices in Houston, a major division in Dallas, and we have 70 people in El Paso. We also have offices in McAllen, Brownsville, and Alpine.

This budget that we have includes 96 people for the Southwest border. A substantial amount of that will be going to those four States. There is a major increase of 54 agents for the methamphetamine program. A lot of that involves the border issue.

So what we have been trying to do is address it. We also are looking, as I mentioned in the office the other day, because of the nature of the trafficking, to make El Paso a separate division. Currently, New Mexico and Las Cruces are covered out of our Denver office. Really, the relationship on drug trafficking is much closer between El Paso, TX, Las Cruces, and the rest of New Mexico. And if we did that, that would be the third division in the State of Texas, and there is only one other State in the Union that has three divisions, California. So our largest commitment has been to California and to Texas.

Senator HUTCHISON. Well, I am really looking forward to that El Paso component because I think you can see from the statistics that it is warranted.

#### REQUEST FOR BORDER PATROL AGENTS

I have only got about 1½ minutes left, and I would like to talk to you Commissioner Meissner, if you would tell me what you are going to do on the Border Patrol issue. Tell me you are going to increase your 500 Border Patrol agents to 1,000.

Ms. MEISSNER. Well, let me say first that we are extremely concerned about Texas, particularly south Texas. We recognize that the investments that we have made in California and in Arizona are creating problems in Texas simply because we have tightened up and the pressure is now in Texas.

We have put very large numbers of resources into Texas in the last 2 or 3 years, but we will be putting much more in in the next 2 to 3 years. The difficulty is that we can build up our resources only so quickly and still do it in a way that is effective.

Let me just give you McAllen, which is the major source of concern at the present time. This year, we are putting into McAllen almost a 50-percent increase, about a 47-percent increase in personnel resources. That is straining our capability. That is as far as we think, responsibly, you can increase the number of agents and still have those agents be properly supervised, have the equipment get to them and be used effectively. You cannot double and triple these sectors all in 1 year. It has to be a multiyear effort. But that multiyear effort is underway. There are large numbers of sensors, large numbers of scopes that have come into Texas and that will continue. Our experience is that it takes 3 years, maybe more, to get the whole package put together so that the fences are built, the roads are built, the training is completed, the supervision is intact, and the intelligence is working in a way that has us focusing where we need to focus.

In terms of the 500 Border Patrol agents this year, we had to make the very difficult choice between infrastructure investment and additional personnel. We have been growing so quickly in this agency, particularly in the Border Patrol. The Border Patrol will have increased by 85 percent on the Southwest border in the last 3 years. That is a huge, huge increase, but the infrastructure to support it has not kept up. We have equipped the agents, but some of the deeper needs that we have, to replace our vehicles on a timely basis, bring enough buses into the system to sustain the detention that has to support the border efforts, improve our detention

at Port Isabel, for instance, are a major aspect of our budget proposal for this year.

There are lots of infrastructure improvements that support the Border Patrol's effectiveness in this budget. We simply felt that we had to have balance in the growth at this point.

Senator HUTCHISON. Thank you, Mr. Chairman. I know my time is up. Ms. Meissner, this is the same thing that Ms. Reno has said. But I have to tell you that Congress has passed a law to deploy 1,000 Border Patrol agents every year for the next 5 years. That is the will of Congress. I understand what you are saying, but I do not think that not deploying the full 1,000 is the right way to go when we have the problems that we have. And I hope we will be able to discuss it more in the future. And I apologize, Mr. Chairman.

Senator HOLLINGS. Mr. Chairman, the Senator from Texas wants more agents, and the Senator from New Mexico wants more equipment. And I have been attending hearings and have been hearing about wonderful hearings of coordination now for 25 years; yet the drug situation gets worse each year and we get more frustrated.

Senator Domenici, when you and I were chairmen just 10 years ago, this Justice Department was \$4 billion. It is now up to \$19 billion. Of course, we are going to get up on the floor in a little while and say let's cut spending, cut spending, cut spending—and taxes, by the way, the wherewithal to pay for any of this, which is a wonderful exercise. But in my opinion, Pete, you and I have got to get some money in education. When I went around—and I have been in 36 of the 46 counties. These cops on the beat are working. And the majority of my cops on the beat have found themselves not on the beat just in the streets in the afternoon, but in the schools—and in the schools lecturing on drugs.

Senator DOMENICI. No doubt.

Senator HOLLINGS. You know, nobody here has been smoking—if we had had this hearing when John Pastore was the chairman, ashtrays would be out and you would have to ask the staff to please open the window here because you could not breathe, literally. But we have learned. And as long as 5 percent of the population is going to snort 50 percent of the drugs in this world, the Senator from Texas, the Senator from New Mexico, and the Senator from South Carolina are going to come here continually frustrated and nothing happens. It just gets worse.

We had General Chapman 20 years ago who wanted to take these porous metal strips that you put for a temporary landing strip during World War II, to erect them in a perpendicular fence, a Maginot Line, all along the Rio Grande for 2,000 miles. We have had every idea in the Lord's world. Senator Hutchison, you are right. They are coming over in the thousands, but all you have to do is go down to Tijuana. How many people cross into the United States from Tijuana in a day, cars and people?

#### NUMBER OF BORDER CROSSINGS

Ms. MEISSNER. You mean cross through the port of entry?

Senator HOLLINGS. Yes; cross the port of entry.

Ms. MEISSNER. It is the busiest crossing port in the world.

Senator HOLLINGS. Yes; but how many? Thousands and thousands. You cannot expect everyone with——

Ms. MEISSNER. Tens of thousands.

Senator HOLLINGS [continuing]. The right equipment to look at how they inspect all those trunks and autos. As long as America is going to snort it, as long as we have got the demand, I can tell you they are smarter than we are. They will get it in here. We, you know, chase the flowers from Colombia. I burned the poppy fields in Turkey. I have been up in the Golden Triangle in Burma, destroyed the factories in Marseille. We are just wasting time. We just all act like we are responsible, and it is the most irresponsible activity I know of to continue and not get on with the education part of it. We have got to do it. It is in the little schools in your State and mine.

Senator HUTCHISON. I just want to say that I think that the points you are making are right on target. But there is one difference between police on the streets and Border Patrol agents and DEA agents, and that is, we cannot fund every police department in America. That is not a Federal responsibility. But there is no alternative to the Federal responsibility of patrolling our borders. That is why, if I have to choose between those two, I am going to choose for the Federal Government to do the job that only it can do and do well. Our borders are under siege, and it is a Federal responsibility to prevent that.

Senator HOLLINGS. Well, I agree with you on the Federal responsibility. That is a good political science course answer. But the reality of the world in which we live is that the best way to patrol that border is to cut back on the need of the patrolling because it is physically and financially impossible for the Federal——

Senator HUTCHISON. Absolutely. You are right.

Senator HOLLINGS [continuing]. To answer up to their responsibility. We can build fences. We can do it, and then they will come back around. Like we have run them out of some of the ports on the east coast, not Baltimore and not Charleston. We have the problem there. But it is going to come in, Pete. You know that. We have got to do something else.

Senator DOMENICI. Could I respond?

Senator HOLLINGS. Yes.

Senator DOMENICI. I noticed that you asked me to stay a while.

Senator HOLLINGS. Yes.

Senator DOMENICI. I appreciate the thoughts. We have worked on a lot of things together, including this committee, for a long time. I am not as pessimistic as you because in the not too distant past we had much less drug use in America than we do today. I am not suggesting that was all attributable to us having less drugs coming into America by law enforcement, but we had less drug use. It is now on the upswing. It is moving up dramatically again.

I would agree to the extent that we ought to be doing both. We ought to clearly be working on the American people and our young people with reference to educating them on not using illegal drugs. I think at the same time, however, a country like ours should not do the minimum on the border; we have got to do the maximum. Clearly, these people are burdened with drug cartels that have a lot of money and a lot of resources.

We are engaging in a pretty good war on drugs on the border. It is much better than it was 3 years ago, and the plans we have got will make it even better in the future. I want to stick right with it, and give them the resources they need. I also want to parochially indicate that while I agree with the Senator from Texas on everything she said, I would want you to know that in the written questions that I submitted, I asked you about New Mexico before she asked you about Texas. [Laughter.]

Senator HUTCHISON. Mr. Chairman, may I also submit another question for the record that I did not have a chance to ask?

Senator GREGG. Yes.

We have a vote on. Did you have another question you wanted to ask?

#### INS COORDINATION WITH POLICE

Senator HOLLINGS. Well, yes. Ms. Meissner, look here it is headlines in my local newspaper: "Police arrest illegal aliens, INS will not get involved." It is the same thing that Senator Campbell was getting into. We not only have it at the border. At least you have an office in Texas. I do not even have an office in South Carolina. I have to call North Carolina. And when we call North Carolina, Immigration, they say, oh, do not worry about them, let them go.

Ms. MEISSNER. But you are getting an office now.

Senator HOLLINGS. Ma'am?

Ms. MEISSNER. You are getting an office this year.

Senator HOLLINGS. We are going to get one?

Ms. MEISSNER. Yes.

Senator HOLLINGS. Good enough. I hope we can move Constantine down there.

#### BORDER CONTROL

Senator GREGG. I do not want to keep you here, so I have a series of questions that I am going to send to all of you. There are a lot of issues which we have questions about that go to the specifics of the budget.

I expect some of us will be here 2 or 3 years from now, Commissioner, and your statement that the borders will be pretty much secure in 2 or 3 years is something we are going to hold you to.

Ms. MEISSNER. I said stable.

Senator GREGG. Well, stable is a much further term than where we are presently. We are going to give you the resources you need to do that, and, hopefully, you can accomplish it. It sounds to me to be a very ambitious goal, but something that we certainly need to accomplish. We will also give DEA and the FBI the resources needed to do their jobs.

I think the problem has been identified, though, by all the members here, and we certainly understand it. There will be problems as long as the demand for drugs is \$7 to \$10 billion. We are a capitalist world. We have established that incontrovertibly, and there are going to be people out there who want to make the money. Whether education can reduce that demand, I do not know, but somehow we have to look at the demand side. We cannot blame it all on Mexico. If I were a Mexican, I would be upset that basically the demand from America has corrupted my entire government, or

a large percentage of my government. The demand issue is a major part of the equation.

#### ADDITIONAL COMMITTEE QUESTIONS

But you folks are on the enforcement side. You are doing a good job. We appreciate it. There are people who put their lives at risk on a daily basis for us, and we very much appreciate that. Therefore, you need the support, and we will continue to give it to you. But we do have some specific questions we will submit.

[The following questions were not asked at the hearing, but were submitted to the agencies for response subsequent to the hearing:]

#### QUESTIONS SUBMITTED BY SENATOR JUDD GREGG

##### FEDERAL BUREAU OF INVESTIGATION

##### NATIONAL CRIME INFORMATION CENTER

*Question.* What capabilities will NCIC 2000 not have that were planned for when we first appropriated funds for this effort? Do you anticipate additional costs over and above the estimated cost?

*Answer.* NCIC 2000 will have the same capabilities that were planned when Congress first appropriated funds for the system. The FBI has made some technical changes in two areas. After contract award, the FBI removed the requirement for an on-line expert system based intrusion detection capability because no product existed that could satisfy the requirement and a prototype being requested in another application proved ineffective. Instead intrusion detection will be accomplished using an audit and analysis sub-system that will run in the background. Also, the original NCIC 2000 contract required the use of Government Open System Interconnection Profile (GOSIP) compliant communications protocols. When the GOSIP mandate was dropped, the FBI decided to use more modern communications that are in line with the protocols criminal justice agencies will use to access NCIC 2000.

The FBI does not anticipate any additional costs over \$183.2 million.

##### INTEGRATED AUTOMATED FINGERPRINT IDENTIFICATION SYSTEM [IAFIS]

*Question.* What additional costs do you anticipate now that the IAFIS completion date has been revised to July 1999?

*Answer.* The FBI has implemented a build to cost approach to the development of IAFIS. This will provide currently defined requirements to the user at the baseline budgetary cost of \$640 million. The IAFIS budget is not expected to change unless Congress mandates additional requirements on the program, or there are major changes in operational user requirements. The FBI does not foresee this happening at this time; however, changes can and do occur in large, complex software development efforts such as IAFIS.

##### FBI LABORATORY INVESTIGATION

*Question.* Can you help me understand where we are with the FBI Laboratory? While we have provided funding for a new lab, modernization of equipment and the quality assurance unit, what additional requirements are anticipated as a result of the Inspector General's investigation?

*Answer.* More than 3 years ago, the FBI began a large number of initiatives to improve the quality and timeliness of examinations performed by the FBI Laboratory. These initiatives include taking the initial steps needed in order to apply for independent accreditation of the Laboratory, obtaining funding for construction of a new state-of-the-art Laboratory facility, and bringing in more scientific expertise. In addition, in order to more efficiently and effectively support the needs of the law enforcement community, the FBI Laboratory is in the process of implementing a reorganization involving, among other things, a more prominent role for the Quality Assurance Unit and a restructuring of the Scientific Analysis Section. These efforts are just part of the FBI's constant work to re-evaluate and improve both the scientific processes and the equipment of the Laboratory. The findings and recommendations are being considered in concert with ongoing and new initiatives of the Laboratory; however, no additional requirements specifically attributed to the Inspector General's report have been identified.

*Question.* Please help me understand whether any of the supervisors that were removed from the lab were accused of intentionally altering evidence? Were any of them promoted? Has any action been taken against them?

Answer. When the FBI received a copy of the Inspector General's draft report, temporary personnel actions were taken with respect to four Laboratory employees, of which only two were supervisors, including Roger Martz, then Chief of the Chemistry-Toxicology Unit, and J. Thomas Thurman, then Chief of the Explosives Unit. Although not accused of "intentionally altering" evidence, Martz was accused of, among other things, fabricating evidence in the VANPAC matter. The Inspector General found no merit to that accusation.

Thurman had been accused of, among other things, altering auxiliary examiner reports dictated by Frederic Whitehurst. The Inspector General found that when acting as principal examiner, Thurman (and certain other FBI Laboratory employees) had altered some of Whitehurst's auxiliary examiner reports. However, the Inspector General did not identify a single instance in which those alterations were made with the intent to bias an FBI Laboratory report. Moreover, of the 13 cases in which the Inspector General concluded that Thurman made substantive alterations to Whitehurst's dictation, none resulted in prosecution.

Whitehurst first complained about Thurman's alteration of dictation in 1992, at which time Thurman was instructed to stop such alterations, and he apparently did so. Subsequently, in 1994, the FBI Laboratory undertook a review of Thurman's files to determine the impact of his alterations. That review was still ongoing in December 1994, when Thurman was promoted to Chief of the Explosives Unit. Because no final determination had been reached with respect to Thurman's alteration of dictation at that time, we do not believe that the Career Board, which considered Thurman's promotion, was aware of or considered the alteration of dictation issue.

Since January 24, 1997, Martz has temporarily been assigned to the FBI's Washington Field Office and Thurman has temporarily been assigned to the Bomb Data Center, where he does not perform or supervise any scientific analysis. The FBI has requested the Department of Justice to determine what action, if any, is appropriate with respect to the Inspector General's findings against Martz and Thurman, as well as the other employees criticized in the report.

#### LABORATORIES FOR FBI AND DEA

*Question.* Director Freeh and Mr. Constantine, what differences do you see with the work that is done at the FBI, DEA, Secret Service, and Bureau of Alcohol, Tobacco, and Firearms (ATF) laboratories? With discretionary spending going down, have you considered consolidating some of these laboratories? By designing the new capability into the new FBI lab, is it possible to consolidate DEA's field labs in the lab at Quantico?

Answer. In October 1995, at the request of the Deputy Attorney General, Director Freeh directed the Office of Investigative Agency Policies to examine the consolidation of the FBI, DEA and INS laboratories. A document known as Resolution 11 served as the guideline for this examination.

Resolution 11 established the Interagency Laboratory Working Group (ILWG) to examine the feasibility of collocating or consolidating the laboratories of the INS and the DEA into the new FBI Laboratory facility.

After a three-month study, the ILWG members reported the finding to the Director of Investigative Agency Policies (DIAP). In the recommendation of the ILWG to the DIAP, the report states "All members of the ILWG are in agreement that the consolidation would provide minimal savings in the sharing of equipment. There would be no savings in terms of personnel costs through consolidation and that there would be minimal savings in terms of space considerations \* \* \*." In addition, it was the position of the ILWG that "\* \* \* it is not possible under consolidation, to maintain the same important services to the DEA and INS by their respective laboratories, if such consolidation were to take place."

The mission of the DEA's laboratory system is to serve as a national and international leader in the field of forensic drug analysis; to provide scientific and technical assistance and service to the special agents of the DEA, FBI and other Federal and state law enforcement agencies. These services are also provided to the criminal justice system at large for the enforcement of controlled substances laws; the development and dissemination of scientific information, and the coordination of scientific activities with other Federal, state and local law enforcement agencies. Through DEA's Office of International Operations, these scientific services are provided at an international level. The FBI, Secret Service and ATF laboratories provide specified support based on their congressionally dictated charters and mission statements.

The DEA laboratories do not duplicate services which are offered by any other Federal law enforcement laboratory. The DEA laboratories' primary function is to analyze evidence for the presence of controlled substances, and to provide fingerprint identification services related to the seizures of controlled substances. Inter-agency agreements have established the DEA laboratories as the exclusive providers of drug analysis support for the FBI, USCS, Border Patrol, and HUD. Analytical support is provided to the United States Park Police, the United States Capitol Police, the United States Secret Service, ATF, National Institutes of Health, and state and local law enforcement efforts when requested. In addition, specialized, highly developed forensic science services related specifically to drug law enforcement, are offered worldwide. No other laboratory system provides this uniquely focused capability.

Consideration has been given to consolidating Federal laboratories. The assumption being that by combining services thought to be "duplicated" by these laboratories, operating costs would decrease, resulting in substantial savings to the government as well as increased efficiency of all services provided. With this idea in mind, an ILWG was established to determine the feasibility of consolidating the FBI Laboratory, the DEA Special Testing and Research Laboratory, and the DEA Mid-Atlantic Laboratory.<sup>1</sup> This group consisted of two laboratory representatives each from the DEA, FBI, and the Immigration and Naturalization Service. Representatives from the Department of Justice and the United States Marshals Service were also participants in this process. The overall objective was to demonstrate a savings which would result from merging laboratories and/or sharing facilities, instrumentation, technical knowledge and expertise. This task was accomplished by reviewing the different laboratories operational costs, mission essential programs, and the needs of the individual laboratories' agencies. The consensus of the ILWG was that consolidation was not a viable option because such an effort would adversely affect the missions of those laboratories involved.

This conclusion was supported by the following facts:

- Consolidation would provide minimal savings in the sharing of equipment among the laboratory scientists. Laboratory equipment is calibrated and configured mechanically for specific kinds of analyses such as: the analysis of drugs, the analysis of arson residues, or the analysis of trace evidence such as fiber or plastics. Mechanical modifications of spectrophotometers and chromatographs for use in other types of analyses involve major expenditures of time and money. These reconfigurations of equipment would offset any potential savings resulting from the sharing of instruments. Additionally, the numbers of each type of equipment are based on the staff size meaning that each piece of equipment is effectively in full-time use.
- Consolidation would result in marginal savings in terms of space considerations. Forensic science laboratories must be configured to receive, analyze, store and process specific kinds of evidence. In the case of drug evidence, storage and destruction can involve amounts ranging from trace amounts to multi-ton quantities. Given the dollar value of the contraband, tightly controlled access and accountability procedures have been developed. The same process applies to safeguarding trace evidence and biological samples including serological specimens. Consolidating evidence handling facilities would present significant problems in the areas of accountability, specimen integrity, and biohazard dangers to staff members. Each type of evidence requires a specific kind of storage facility and specially trained people to handle the specimens submitted for examination.
- Consolidation results in a centralized system of laboratory support. United States Government forensic science laboratories were established to provide front line, tactical support, and to address specific analytical requirements.

All eight DEA laboratories provide analytical services in the examinations of controlled substances, and fingerprints in controlled substance enforcement investigations. Consolidating the DEA laboratories would mean removing them from the geographical areas where their impact over the past twenty-four years has been felt at all levels of law enforcement.

The issue of consolidating DEA's field laboratories with the new FBI laboratory at Quantico, would be neither cost effective nor practical from an operational perspective to consolidate DEA's seven field laboratories and DEA's Special Testing and Research Laboratory with the new FBI Laboratory at Quantico. Along with direct analytical responsibilities in the laboratories, there are also accompanying responsibilities for all laboratory directors to provide training to state and local forensic science analysts and enforcement personnel working primarily to enforce state drug

<sup>1</sup> Pursuant to Attorney General's order number 1814-93, Resolution 11 concerning Department of Justice laboratories was issued.

laws in all fifty states. The DEA Special Testing and Research Laboratory scientists provide specialized forensic drug analysis training at DEA international forensic chemists seminars at least once a year, and at state and local forensic chemists seminars at least five times a year. What sets the DEA laboratory system apart is the fact that scientific personnel are strategically located around the United States to provide enforcement assistance in controlled substance examinations, including clandestine laboratory seizures, within a matter of hours.

The General Services Administration (GSA) prospectus development study of 1992, the interagency laboratory working group study of 1995, the interagency budgetary adversary council review of 1995, and the Inspector General's (IG) report issued at about this same time have examined the feasibility of consolidating the DEA laboratories into one geographical area, or consolidating DEA's laboratories with other government laboratories. In each case, the conclusions were the same—the logistics, finances, and mission support impact would severely hamper United States drug enforcement efforts. The IG report reflected a 97 percent satisfaction rate for DEA laboratories' services in the enforcement and legal communities.

There are currently more than 190 forensic chemists assigned to the eight DEA laboratories. The primary responsibility of these laboratories is to provide operational support to this country's drug enforcement efforts. This mission is achieved through the analysis and evaluation of suspected controlled substances. These analyses of controlled substances are accomplished with one goal in mind—to facilitate the enforcement of the drug laws passed by the United States Congress. At the same time, all DEA chemists are tasked with providing testimony in state and Federal courts in their laboratories' respective geographical areas of responsibility.

From a building design perspective, the examinations of drugs requires an isolated laboratory designed to accommodate large quantities of chemical vapors, and hazardous chemical disposal capabilities. The existing DEA laboratories are in need of replacement because of age and new environmental laws. New DEA laboratories are in the design phase to comply with environmental and safety standards. These laboratories are being designed with specialized air handling systems and increased analytical capabilities. In the Administrator's Congressional Appropriations Testimony of March 19, 1997, before the House Appropriations Committee, Subcommittee on Commerce, Justice, State, Judiciary, and related agencies, regarding fiscal year 1998 appropriations, Mr. Constantine requested funding for laboratory reconstruction. The Administrator reinforced his commitment to "safe and efficient laboratory facilities." He voiced his support for providing "chemists and support staff a safe working environment \* \* \* that can handle the increased volume of drugs and evidence flowing from burgeoning investigations."

In summary, consolidation of DEA's field laboratories with the new FBI laboratory at Quantico is not practical. The price in dollars would be very high. More importantly, however, there would be an accompanying negative impact on the enforcement efforts of DEA in providing strategic, operational, and scientific support for drug law enforcement initiatives in this country and abroad. With the current laboratory system infrastructure, DEA has been successful in providing a service which works for Federal drug law enforcement.

#### FBI DISCIPLINARY OFFICE

*Question.* Has the FBI created a new disciplinary office? Would you help me understand why such an office should not report directly to the Attorney General?

*Answer.* Yes. The FBI recently consolidated under a new, independent Office of Professional Responsibility (OPR) disciplinary functions that were previously located in its Inspection and Personnel Divisions. The new FBI OPR reports directly to the Deputy Director. The FBI hired a career Federal prosecutor to lead the OPR and provided additional staffing to ensure the Office has the resources needed to conduct its investigations thoroughly and on a timely basis. The reprogramming request for the additional staffing was approved by the Congress on January 8, 1997.

On November 8, 1994, the Attorney General issued a Departmental Order that gave the Director the responsibility for exercising authority in all FBI personnel matters. The Order also established reporting and oversight procedures to permit the Attorney General and her staff the ability to exercise supervision of an OPR matter when necessary.

FBI disciplinary procedures are designed to address routine cases, which are the great majority of matters handled. Procedures also exist however, to address unique, sensitive situations which allow for FBI resources to be assigned directly to the Department of Justice to investigate and/or adjudicate these matters. As a practical matter, disciplinary authority is so intimately intertwined with the exercise of other personnel and managerial authority that it can only be exercised in coordination

with and not independently of those other functions, as in those rare cases provided for by the Attorney General's November 1994 order.

#### TELECOMMUNICATIONS CARRIER COMPLIANCE

*Question.* Why is the FBI requiring simultaneous wiretapping capability in dozens of areas where no taps have ever been requested? Shouldn't the FBI place a higher priority on areas where there is a demonstrated need for simultaneous tapping capability?

*Answer.* In its review of historical interception activity, law enforcement recognized that there were a number of geographic areas that did not exhibit interception activity during the time period studied (January 1, 1993, through March 1, 1995). This does not mean that these areas never experienced interception activity; rather, that interceptions did not occur in these areas during the 26-month study period. Experience has shown that criminal activity or exigent circumstances can occur anywhere and at any time. In view of this circumstance, it would not be prudent to establish capacity requirements of zero as it would not provide even minimal flexibility. In addition, the absence of capacity requirements in a particular geographic area would largely undermine the intent of CALEA, which is to preserve law enforcement's existing ability to conduct interceptions. Law enforcement must be capable of preserving some level of interception ability in all geographic areas.

Consequently, in counties with little or no historical interception activity, a minimum actual capacity requirement of two and a maximum capacity requirement of three were established applicable to telecommunications carriers offering local exchange service. Likewise, in wireless market service areas with little or no historical interception activity, a minimum actual capacity requirement of two and a maximum capacity requirement of four were established applicable to telecommunications carriers offering cellular and Personnel Communications Systems services.

The capacity requirements will serve to advise telecommunications carriers of their obligations for supporting future potential law enforcement interceptions. These obligations will exist regardless of whether a particular telecommunications carrier receives reimbursement for complying with the capacity requirements out of CALEA funds. Those carriers who have significantly upgraded, replaced or otherwise undergone a major modification must comply with the capacity requirements post carrier statement submission without the benefit of recovering costs through CALEA. What is important to note is that law enforcement will apply CALEA appropriated funds in a prioritized manner. CALEA expenditures will be made in such a way as to ensure that those geographic areas with the highest interception activity and existing technological impediments are addressed first.

*Question.* Regarding CALEA who are you negotiating with? If the FBI has not started to negotiate cooperative agreements with carriers, how can Congress reasonably expect the FBI to meet the September 1 deadline for the implementation of these agreements? Why is the FBI insisting on standards that no one in the telephone industry believes are necessary and, if implemented, would be subject to legal challenges due to the invasion of privacy?

*Answer.* The FBI is in the process of negotiating cooperative agreements with telecommunications carriers and the manufacturers with whom they will subcontract. Actual awarding of cooperative agreements will begin upon Congressional approval of the FBI's March 27, 1997, reprogramming notification to begin the obligation of appropriated funds. The September 1 deadline does not apply to the implementation of cooperative agreements. Since January 1997, the FBI has had several general meetings to explain to the telecommunications industry the purpose and process for the cooperative agreements. Additionally, the FBI has had several one-on-one meetings with carrier/manufacturer pairs for the purpose of negotiating terms and conditions and resolving technical issues associated with each individual contract. To date, the process is moving forward in a positive manner, and it is anticipated that the first cooperative agreement will be executed in the near future.

In order to aid the telecommunications industry in meeting the assistance capability requirements and as part of the consultative process mandated by CALEA, law enforcement has submitted comments and made recommendations to the industry's standards setting process. These comments and recommendations have been aimed at educating the industry on what is necessary to comply with the requirements of electronic surveillance statutes, the rules of evidence, and in court. Failure to meet these requirements could jeopardize the ability of the United States Government to use electronic surveillance evidence in a criminal proceeding. Although the standard presently proposed by industry does not include a few of the recommendations suggested by law enforcement, the parties participating in the cooperative agreements are willing to table the disagreements regarding particular requirements in order

to allow for a systems engineering and cost analysis to be conducted on all of the requirements. It is hoped that the results produced by the first set of cooperative agreements will assist both industry and law enforcement in assessing the complexity and reasonability of the requirements. It will also go a long way toward moving the implementation process forward.

With regard to the standard, the FBI recognizes that the telecommunications industry has advocated the adoption of a "minimalist" standard. Such a standard could potentially create new electronic surveillance problems and shortfalls, which CALEA was intended to avert. Therefore, the FBI and other Federal, state, and local law enforcement have recommended that the industry adopt a standard which is consistent with the requirements of CALEA, electronic surveillance statutes and the rules of evidence. There is nothing among law enforcement's recommendations for inclusion into the standard that is inconsistent with existing electronic surveillance law and would represent an unlawful invasion of privacy.

#### IMMIGRATION AND NATURALIZATION SERVICE

##### CITIZENSHIP USA

*Question.* Can you provide me with the status of denaturalization and deportation proceedings against the 168 or more naturalized aliens determined to be "presumptively ineligible"?

*Answer.* The Naturalization Review Team is currently reviewing the FBI rap sheets and immigration records of the 71,112 individuals naturalized from August 31, 1995, to September 30, 1996, identified as having potentially disqualifying arrest records. This first phase of the review consists of sorting these individuals into the categories of properly naturalized, presumptively ineligible, and requires further inquiry. This phase of the review is ongoing and no final number of presumptively ineligible individuals has yet been determined. The second phase of the review will not begin until the first phase is completed.

During the next phase, the records of all individuals identified as presumptively ineligible will be reviewed to verify that no further action is necessary. INS will then initiate revocation proceedings in all appropriate cases. During the second phase of the review, priority will be given to those presumptively ineligible individuals who are nearing the end of the 2-year period to initiate administrative revocation proceedings.

*Question.* Can you provide me with the status of background checks for the 180,000 naturalized aliens for whom no background check was conducted? Am I correct that INS cannot compel fingerprints from the individuals in question? If so, lacking fingerprints, how will INS conduct the necessary background checks?

*Answer.* The INS is currently investigating procedures for checking the criminal records of citizens who may have been naturalized without an FBI fingerprint clearance. One option is to request the 179,524 citizens to voluntarily resubmit fingerprint cards to the INS for clearance by the FBI. However, the INS does not have authority to compel submission of fingerprints from naturalized citizens. Therefore, the INS would have to rely on name checks run against the FBI's full Criminal Justice Information System (CJIS) database for those individuals who do not voluntarily resubmit fingerprint cards. CJIS name checks were completed for 113,126 of these individuals before naturalization. Another option would be to rely solely on CJIS name checks for the entire population of 179,524 individuals.

Regardless of which option is pursued, any criminal records identified by the background checks would be reviewed against the individual's naturalization record in accordance with procedures established by the Naturalization Review Team, which is currently reviewing decisions for individuals naturalized between August 31, 1995, and September 30, 1996, who have felony arrest records.

*Question.* Recognizing the paramount importance of restoring and maintaining the integrity of the naturalization process, how many naturalization applicants do you estimate that the INS can properly handle in fiscal year 1998? Help me understand why we should not limit the number of naturalization applications processed? What do you suggest to bring INS' workload in line with its capabilities?

*Answer.* The INS anticipates receiving 1.8 million naturalization applications in fiscal year 1997. There is no current estimate of how many naturalization applications the INS will receive or be able to process during fiscal year 1998. Limiting the number of naturalization applications processed by INS each year would not be an appropriate measure to ensure the integrity of the naturalization process. It would be unfair to the vast majority of naturalization applicants who are eligible and anxious for the benefit of citizenship. Rather than limiting the number of naturalization applications processed each year, the INS must adhere to systematic and

standardized naturalization procedures, and continue to strengthen its quality assurance measures.

*Question.* There are concerns that Designated Fingerprint Services providers are even more susceptible to fraud than civics and language testing contractors. What objection, if any, would you have to limiting fingerprinting to INS and law enforcement agencies? Would it be less objectionable if INS and law enforcement agencies could charge a fee for service?

*Answer.* The critical factor affecting the integrity of the fingerprinting process is to ensure that the fingerprint submitted to the FBI belongs to the applicant. A verification step in the fingerprint process would maximize the security of the process without regard for who collected the fingerprint, or who controlled the fingerprints after collection.

If INS performs fingerprinting and receives the applications at INS offices, this security risk is minimized but not completely eliminated because we are using "picture verification" on identity documents to confirm identity and we are not verifying that the individual is the same at the time of interview. The impact of this alternative is diminished service levels to the customer due to an additional trip to INS offices and higher cost to the INS and customers because the INS will have to open new satellite offices to handle the volume. This option would also require long trips for many applicants to the nearest INS office. To add full security, INS would have to implement biometrics verification at interview time. This cost for this should be paid by the customer through an exam fee. The implementation of such an alternative can take between 6 to 12 months to set up new offices and will require a fee change.

In INS's experience, many law enforcement agencies (LEA's) are unwilling to do fingerprinting for immigration benefit applicants, which has become even more onerous with the requirement that fingerprint cards must be sealed and signed in a specific manner. Many LEA's see fingerprinting of immigration benefit applicants as an unwelcome burden, which is inconsistent with their misprints taken by LEA's for immigration-related purposes is not consistently high. This is because LEA's often use lesser trained clerks and volunteers to take fingerprints for INS applicants, reserving better trained officers to take fingerprints for law enforcement purposes. In addition, monitoring and terminating LEA's for quality problems would be complicated with one LEA monitoring another. Finally, to prevent applicant fingerprint substitutions, LEA's would need to accept applications, which would require them to accept and provide receipts for payment. Given that LEA's already can charge a fee for fingerprint services, such a fee does not make this alternative less objectionable.

#### CONSOLIDATION

*Question.* It is my understanding that the positions of Associate Commissioner for Finance and Associate Commissioner for Human Resources and Administration have not been filled in order to improve efficiency and accountability by "flattening" the INS hierarchy. I commend you for your efforts. What consideration have you given in doing the same for the Offices of Associate Commissioner for Enforcement, Associate Commissioner for Examinations, and Associate Commissioner for Information Resources Management?

*Answer.* In 1994, we implemented a number of institutional reforms as a first step in long-range managerial efforts to overcome severe problems within the Service. A proposed 1997 reorganization takes a second step in this long-range institutional reform. After several years of experience with the 1994 changes, we identified the need for additional organizational change in several areas. In some cases, the need follows efforts to fulfill and extend the 1994 reorganization. Other areas result from dramatic changes in the Service's work during the last three years.

The goals of the current reorganization proposal are to strengthen the integrity of Servicewide programs and operational activities, to build a professional workforce for the 21st Century, and to provide an organizational structure that facilitates effective and efficient implementation of the immigration laws. We are currently developing detailed plans to implement these goals, which will result in some changes to the current structures within the Office of Programs, Field Operations, and Management. I believe that these changes will improve efficiency and accountability within the INS.

## DRUG ENFORCEMENT ADMINISTRATION

## WAR ON DRUGS

*Question.* Would you comment on where you see where the United States is on the war on drugs? Would you agree that this war is not going to stop the way we are addressing it now?

*Answer.* The Drug Enforcement Administration (DEA) has documented a number of trends suggesting that both international crime and the illicit drug trade have undergone a radical shift in recent years. The drug trade has expanded from a cottage industry into many sophisticated organized criminal enterprises of global proportions. Drug trafficking organizations within the United States are controlled by criminals sheltered beyond its borders. Drug syndicates—particularly ones in Colombia and Mexico—have become the most powerful criminal establishments, and the influence and power exerted by these drug traffickers threatens the governments of their nations, as well as the citizens of the United States.

Yet despite their reach and power, these drug trafficking organizations remain vulnerable in certain respects. U.S. law enforcement has demonstrated that one of the best ways to dismantle organized crime syndicates is to attack their leadership and infrastructure; this disrupts their ability to continue their illicit operations and causes them to decline in disarray. This was the strategy used to diminish the significance of La Cosa Nostra in the United States to a shadow of what it was in the 1950's. In a similar way, the Colombian National Police (CNP), with the assistance of the United States, crippled the Cali Cartel, one of the most powerful criminal organizations in the world.

In order to be successful, this strategy must be a collaborative effort relying upon the cooperation of various governmental entities. The federal law enforcement and intelligence communities, in partnership with state and local authorities, should target the communications, and command and control centers of the drug trafficking organizations and develop compelling criminal cases against their leaders and members. Once arrested, these criminals should be prosecuted fully and serve meaningful sentences commensurate with the gravity of the offenses committed. Prosecutions should be pursued vigorously in the country where the interests of justice are most likely to be served—if this is not likely to occur in the country of arrest, then the defendant should be expelled or extradited to the United States to stand trial here.

#### *Trends in Drug Trafficking*

DEA has identified and described six drug trafficking trends as follows:

*Threat to democracy.*—Today's international drug syndicates have garnered such power and influence as to threaten the democracy of nations, compromise governments and institutions, and weaken economies.

*Sophistication and technology.*—Drug trafficking organizations with their vast wealth command state-of-the-art equipment and expertise. They employ the top attorneys, accountants, bankers, financiers, chemists, linguists, technicians, computer designers, and transportation and communications experts. These drug syndicates are well-organized and have networks of counter-intelligence experts to protect their enterprises. Their resources rival those of many sophisticated international corporations—especially, with respect to wireless and secure communications, transportation networks, and computer systems.

*Syndicates are maturing faster.*—Drug trafficking syndicates are developing at a faster rate than at any previous time. For instance, La Cosa Nostra, rose to power in the United States over a 75-year period; ethnic-Chinese gangs in United States matured over several decades; Colombia's Medellin Cartel developed in 15 years; the Cali Cartel evolved in 10 years; and the syndicates in Mexico, the most immediate threat, reached their power in less than a decade. This trend is significant because (1) law enforcement has greater difficulty staying ahead of the criminal organizations, if they develop so rapidly; and (2) the global nature of the drug trafficking industry and the advancements in communications, technology, air travel, and banking, enable drug traffickers to have a more direct and immediate impact upon citizens of other nations.

*The establishment of syndicates in Colombia and Mexico.*—In the late 1980's, Colombian traffickers were the dominant drug trafficking organizations that controlled the supply of cocaine to the United States. However, in the early 1990's, the Colombian organizations began searching for new transportation routes and turned to criminal organizations in Mexico who controlled smuggling corridors into the United States.

Early in their alliance, Mexican traffickers settled for a relatively small cash percentage derived from each cocaine shipment transported into the United States.

Eventually, Mexican drug traffickers, looking to expand their own influence, re-negotiated their arrangements with the Colombian trafficking organizations; instead of receiving cash payments for their transportation services, the Mexican traffickers demanded a percentage of the cocaine transported—in some cases, up to half of each cocaine shipment. Over time, this arrangement enabled the Mexican drug traffickers to establish their own transportation and distribution networks in the United States. With this increasing power, Mexico-based trafficking syndicates solidified control over the markets of other drugs, such as black-tar and brown heroin, methamphetamine and precursor chemicals, and marijuana.

Today, drug traffickers comfortably insulated in Colombia and Mexico control the U.S. cocaine market through their associates in the United States, working to expand their share of the U.S. market. Colombian traffickers largely control the East Coast drug markets, while Mexican traffickers dominate the West and Southwest markets; both groups are converging on the Midwest markets. Recently, however, there have been some indications that Mexico-based organizations have made some inroads into the cocaine markets on the East Coast, formerly controlled by traffickers from Colombia.

*Drug-related violence.*—Colombia- and Mexico-based drug trafficking organizations are responsible for much of the drug-related violence in the United States. On several occasions, U.S. authorities have identified and arrested violent offenders that had been dispatched by the Colombian and Mexican drug traffickers to execute their violence in the United States. In the West and Southwest, the surrogates of Mexican drug trafficking organizations have forged strong alliances with street gangs, such as the Crips, Latin Kings, and Brown Assassins, to distribute drug shipments and carry out violent acts, including murders.

*Emerging organizations and alliances.*—The drug trade has given rise to new trafficking syndicates and criminal alliances around the globe. U.S. authorities have identified several representatives of major Colombian traffickers meeting with criminal leaders in Italy and Russia in an apparent attempt to forge agreements for importing drugs into Eastern Europe and other nations in transition. Furthermore, there have been indications that criminals in Albania, Bosnia, Croatia, Herzegovina, Serbia, and Slovenia are beginning to enter the drug trade and stand to gain power from their position along the Balkan trafficking routes. In addition, Mexican traffickers have attempted to purchase coca directly from the suppliers in Bolivia—a move that, if successful, could impact the role of Colombian traffickers in the cocaine trade.

Among the most striking trends is the rise of West African criminals in the world heroin trade. Nigerian criminals are well-organized and sophisticated and have formed close alliances with criminals in Thailand and other parts of Southeast Asia.

#### *Fighting Drug Trafficking Organizations*

DEA's National Investigative Survey is anchored in three major initiatives that focus resources where they will have the most impact—(1) on the sophisticated criminal syndicates from Colombia and Mexico that control the vast majority of the drug trade in the Western Hemisphere; (2) their U.S.-based distribution infrastructure; and (3) the surrogates used by the trafficking organizations (often violent drug gangs) to peddle their poison on the streets of our country.

First, DEA directs its investigative assets against the communications systems of the command control functions of the major organized crime syndicates from Colombia and Mexico. Second, DEA attacks the U.S.-based infrastructure of these organizations that direct and control the flow of thousands of tons of cocaine, heroin, and methamphetamine into the United States. Third, DEA targets violent drug trafficking groups operating within the borders of the United States. In support of these three initiatives, DEA is actively involved in the following programs:

*Southwest Border Initiative.*—The Southwest Border Initiative (SWBI) targets the major drug organizations on both sides of the U.S.-Mexico border. The strategy's objectives are to dismantle Mexican drug trafficking organizations, strip them of their illicit assets, and arrest, prosecute, and incarcerate their criminal leaders for terms of imprisonment commensurate with the offenses committed. The SWBI is a result of a close, collaborative effort involving the DEA, Federal Bureau of Investigation (FBI), U.S. Attorneys, U.S. Customs Service, the Department of Justice's Criminal Division, the High Intensity Drug Trafficking Area (HIDTA) program, and state and local law enforcement agencies.

*Mobile Enforcement Teams.*—The initiative of the Mobile Enforcement Teams (MET's) is designed to assist local police agencies with DEA's expertise and necessary resources to target, arrest, and remove violent drug offenders from communities and reduce the threats posed by drug trafficking organizations within these communities. By early 1997, MET's had been deployed to more than 90 jurisdictions

across the country, and they accounted for more than 3,000 arrests of violent drug offenders, and the seizure of large quantities of illicit drugs and millions of dollars in assets.

*Organized Crime Drug Enforcement Task Force Program.*—The Organized Crime Drug Enforcement Task Force (OCDETF) Program, administered by the Department of Justice's Criminal Division, is an inter-agency law enforcement program which targets the highest-level drug traffickers in the country. DEA, and eight other federal agencies participating in the OCDETF program, act in concert with numerous state and local agencies and have, over the years, achieved unprecedented levels of cooperation and coordination.

The United States is years away from an end to drug abuse and trafficking and the drug-related violence facing this country. Nevertheless, we must continue to work towards a solution—which is not a question of choosing among law enforcement, interdiction, education/prevention, or treatment. Instead, we must adopt an integrated, comprehensive approach to incorporate all perspectives and viewpoints. We must strive to protect future generations from the slow misery and decay caused by drug abuse, while trying to rescue the present generation from the immediate harm posed by drugs.

#### MEXICO

*Question.* What course do you believe we should take with respect to Mexico?

*Answer.* Despite the achievements that the Government of Mexico has accomplished in combating drug trafficking, there is much more that needs to be done. We believe that the solution lies not in cordoning ourselves off from them, but, rather, in working with and supporting President Zedillo's counternarcotics efforts. Mexico is an indispensable partner in combating drug trafficking.

The U.S. Government therefore should support the Government of Mexico in what will be a long-term effort to build an effective law enforcement capacity. In the meantime, we should offer assistance to the special law enforcement units developed by the Government of Mexico that will lead the attack against the traffickers, while continuing our own aggressive campaign against these criminal organizations domestically.

To that end, DEA is providing assistance in the following ways to the Government of Mexico:

- DEA is providing assistance to the Government of Mexico in selecting and screening candidates to become a member of Mexico's special counterdrug enforcement units. The U.S. Government has offered assistance and technical support throughout the "vetting" process, which includes: (1) security questionnaires and background interviews; (2) medical and psychological screening (records review and aptitude/profile testing); (3) initial and random urinalysis; and (4) polygraph examination.

This "vetting" process, combined with enhanced training, a minimum time commitment [the U.S. agencies have suggested a three year minimum assignment]—and a premium pay to reflect the additional training—would increase our confidence in the special counterdrug enforcement units, indicating that they are substantially free of corruption and have competent personnel to combat the highly sophisticated and violent drug trafficking cartels. Although the "vetting" process is no panacea, it is a step in the right direction by the Government of Mexico.

- DEA has provided and will continue to provide significant training programs to the new recruits of Mexico's special counterdrug enforcement units. In mid-August 1997, the first class of Mexican counterdrug agents completed a four-week intensive investigative analysis training seminar conducted by DEA, FBI, U.S. Customs Service (Customs), and Department of Justice personnel. A second session is now underway and others will follow as the U.S. agencies work to provide these Mexican enforcement units with up-to-date training.

- DEA is providing assistance to the Government of Mexico in establishing an internal affairs unit which will conduct in-service integrity checks on Mexican law enforcement agents. It is essential to have an integrity assurance program in place. Unless these specialized enforcement units are trustworthy, informants who cooperate will not be safe, undercover investigations will be compromised, and the information-sharing process will not function smoothly.

*Border Task Forces.*—DEA is devoting additional agents and resources to establish and develop strong and solid law enforcement investigative units in Mexico. On July 30, 1996, U.S. and Mexican law enforcement officials signed a Memorandum of Understanding establishing bilateral drug law enforcement units along the U.S.-Mexico border known as Border Task Forces (BTF's). The BTF's were poised to be

the key units for U.S.-Mexico cooperative enforcement efforts targeting major drug trafficking organizations along the U.S./Mexican border. DEA, FBI, and Customs are working with the Mexican Attorney General's Office (PGR) and counternarcotics enforcement offices/agencies to create and establish three bilateral Border Task Forces in Juarez, Tijuana, and Monterrey.

The U.S. Government and the Government of Mexico anticipate that complete staffing of the "vetted" BTF's will include 18 Mexican counterdrug agents, one Mexican prosecutor, and six U.S. "commuter" agents [DEA, FBI, and Customs agents who reside in the U.S. and cross the border each day to join the BTF's], complemented by a 30- to 50-person response unit for each BTF location. This bilateral effort holds the greatest potential for success in developing compelling cases against the major trafficking groups—with the everyday exchange of important U.S. and Mexican law enforcement information, the joint analysis of that information, and the development of strong cases leading trafficker convictions.

The success of the BTF's depends upon the participation of both the in-country agents assigned to the resident officers and the 22 "commuter" agents. If one of these two entities is unable to participate in the BTF's, the effectiveness of the BTF's will be impeded. Because drug traffickers disregard international borders, the ability of BTF's to perform the envisioned function will be severely limited without the participation of the "commuter" agents.

Regrettably, however, the BTF's have not realized their potential effectiveness and continue to be impeded by administrative and operational problems. To date, the BTF's have faltered and have not achieved their primary objective: the immobilization of the Juarez and Tijuana Cartels. Indeed, both the Amado Carrillo Fuentes Organization and the Arellano Felix Organization continue to operate.

—Despite the documented threat to law enforcement (see below) along the U.S.-Mexico border, the Government of Mexico has not approved the U.S. request for U.S. law enforcement "commuter" personnel to carry firearms for self-protection. Because we have not yet been able to resolve with the Government of Mexico our grave concern for the safety of our agents assigned to the BTF's in Mexico, we have been forced to curtail the participation of U.S. agents who would be crossing the border daily to carry out their duties. Without the direct participation and guidance of U.S. agents—the resident in-country agents and the "commuter" agents—the BTF agents are not likely to pursue and competently develop investigations against major trafficking organizations independently.

—The BTF's have suffered from corruption within their leadership. For example, 17 Mexican law enforcement officials, including a federal prosecutor, military officers, and law enforcement officers, were arrested between June 3 and June 9, 1997, for the theft of 476 kilograms of cocaine from a PGR office in the state of Sonora. The cocaine had been seized by the Mexican Army and turned over to the PGR three weeks earlier, and the stolen cocaine has not been recovered. All BTF staff will now be fully "vetted."

—Although the Government of Mexico has committed to provide full support to the BTF's once they are completely "vetted," these resources have not yet been made available. The Government of Mexico initially pledged \$2.2 million to the efforts of the BTF's; however, to date, the Government of Mexico has furnished approximately \$600,000 in equipment, and small purchases. This figure falls far short of the nearly \$6 million available from seized assets previously forfeited by the U.S. Government and shared with the Government of Mexico for bilateral law enforcement purposes.

Despite the shortcomings of the BTF's, DEA will be adding more resident agents to the existing offices in Tijuana and Juarez. On July 11, 1997, the Government of Mexico formally authorized an increase of six DEA Special Agents and six FBI "Resolution Six" Special Agents to be assigned to duty in Mexico. These resident agents will serve as an interim stop-gap support to the BTF's until the "commuter" agent concerns are satisfactorily resolved.

*Dissolution of the INCD and Establishment of the Special Prosecutor's Office for Crimes Against Health.*—On April 30, 1997, the Narcotics Institute to Combat Drugs (INCD) was dissolved, and the Special Prosecutor's Office for Crimes Against Health (FEADS), headed by Mariano Herran Salvati, was named by Attorney General Jorge Madrazo as the Mexican federal agency responsible for counterdrug law enforcement efforts. The dissolution of the INCD and the reorganization of the principal Mexican drug law enforcement agency, although necessary, have further slowed any progress.

The "vetting" process for the new PGR units, including the FEADS, is proceeding, but faces many difficulties. On July 29, 1997, Commissioner Herran stated that all personnel of FEADS will be subject to the full "vetting" process. The "vetting" process will be accomplished in two phases—the first will focus on administrative per-

sonnel at FEADS Headquarters in Mexico City, and the second phase involves the "vetting" of personnel assigned to the Bilateral Border Task Forces (BTF's). Thus far, 150 FEADS agents have been "vetted."

Of the 39 FEADS agents who have completed their "vetting" and the above-described training program in the United States, 10 are now assigned to the Organized Crime Unit (OCU). Of the 29 remaining FEADS agents, two have been assigned to the BTF's and the other 27 will be assigned to the BTF's upon completion of the PGR Training Academy. On September 8, 1997, 40 additional FEADS agents began training in the United States; they will similarly be assigned to the BTF's and OCU.

At this time, the transformation of counterdrug enforcement agencies in Mexico is still a "work in progress." Many of the INCD officers remain in place as the "vetting" process is beginning for the FEADS replacements. Further, the PGR must contend with the fact that nearly 700 agents dismissed for corruption by former Attorney General Antonio Lozano from the pre-existing INCD have now been reinstated after successfully challenging certain procedural flaws in the dismissal process.

Today, the FEADS, as an organization, lacks any real infrastructure support—their agents have typically not been issued credentials, badges, or weapons, and they only have limited resources with which to work. Until a sufficient number of personnel are fully "vetted" and the reinstated INCD personnel who do not survive the "vetting" process are removed, the organization cannot move forward with effectiveness or confidence in security and integrity.

*Safety Along U.S.-Mexico Border.*—The severity of violence along the U.S.-Mexico border continues to increase at an alarming rate. The trafficking organizations responsible for this violence continue to operate. The U.S. Government's repeated requests to the Government of Mexico to enable U.S. agents to carry firearms for self protection continue to be denied.

Since March 1997, DEA has recorded 49 incidents of threats against both the U.S. and Mexican law enforcement personnel and their sources of information along the U.S.-Mexico border. The escalation of violence, as demonstrated by the increased number of kidnappings, shootings, and murders along the border, remains largely unchecked. Drug traffickers continue their brazen attacks against both U.S. and Mexican officials and their informants. This situation places U.S. law enforcement personnel operating along the border in an extremely dangerous and precarious environment.

*Organized Crime Law.*—In November 1996, the Government of Mexico passed an Organized Crime Law, which included: (1) authorization to conduct electronic surveillance; (2) a witness protection program; (3) plea bargaining; (4) conspiracy laws; (5) undercover operations; (6) the use of informants by police; and (7) asset forfeiture. Having the law on the books is not sufficient; these authorities must be fully implemented. Guidelines and policies for these new procedures need to be promulgated by the PGR, and competent, trustworthy judges need to be identified for these sensitive cases. Until these are accomplished, the efforts of the BTF's and other Mexican special investigative units will continue to be hampered in conducting the necessary information gathering activities authorized by the Organized Crime Law.

To conduct effective law enforcement investigations in Mexico, these specialized units must utilize state-of-the-art investigative techniques, including court-authorized electronic surveillance. In order to conduct electronic surveillance properly, the Government of Mexico must identify a cadre of competent and trustworthy prosecutors and judges to apply for and approve court-authorized electronic surveillance and other sophisticated investigative techniques, without the fear of compromise.

The Organized Crime Law not only mandated that the Government of Mexico form an Organized Crime Unit (OCU) to conduct investigations pursuant to these authorities, but further stipulated that the laws could not be enforced until the OCU was formed and properly trained. The OCU is now, at least, partially in place and consists of 55 officers to investigate crimes specified under the law. DEA and FBI have worked and will continue to work with the PGR to establish the OCU. It is anticipated that the OCU will pursue investigative leads provided by U.S. law enforcement agencies and will share information with their U.S. counterparts.

*Southwest Border Initiative.*—In our continuing efforts to dismantle the Mexican drug trafficking organizations and disrupt its operations, the continuation of the Southwest Border Initiative is critical (as described previously). Since its inception, the SWBI has proven to be an important and effective coordinated effort focusing on drug trafficking across the U.S.-Mexico border. The SWBI is law enforcement's collaborative response to the substantial threat posed by Mexican groups operating along our Southwest Border.

*Question.* Will the 96 agents you are adding this year help address the Mexican Cartels that have gone unchecked to this point in time? What can we do to help you?

*Answer.* The enhancement of the 96 Special Agents in DEA's 1998 budget request will augment and complement DEA's existing counterdrug force. DEA will use some of the positions assigned to Mexico to establish new offices in the key strategic border towns of Juarez and Tijuana, and personnel assigned to these offices will be used to support and strengthen the operations of the BTF's, as described above.

DEA's counterdrug enforcement operations along the Southwest Border are geared toward attacking and dismantling the command and control structures of the major Mexican trafficking organizations. These organizations are responsible for smuggling vast quantities of cocaine, heroin, marijuana, and methamphetamine into the United States. The 96 positions requested in the 1998 budget will be used primarily to enhance DEA's information gathering capabilities in Mexico and along the Southwest Border and will enable DEA to track and investigate the major Mexican trafficking organizations and their activities within the United States.

DEA's enforcement operations are sophisticated and labor-intensive; therefore, the agency's staffing requirements are continually growing. DEA is grateful for the funding support provided by Congress for its operations along the border last year and appreciates any further assistance provided in 1998.

*Question.* What can you share with the Committee about the distribution of narcotics between Mexico and the Northeast?

*Answer.* The distribution of narcotics between Mexico and the Northeast United States can best be explained and described based upon the particular drugs and unique markets, as follows:

*Cocaine.*—Typically, Mexican drug traffickers transported cocaine shipments from the Southwest Border only as far as the Midwest. However, recently, there have been instances where Mexico-based traffickers have emerged in the New York City cocaine market. For example, in March 1997, 1.6 metric tons of Colombian-owned cocaine were seized in the New York City area, where a Mexico-based organization had transported the cocaine shipment in carrot crates from Mexico to New York City.

In addition, during 1996, a unique OCDETF operation, code-named ZORRO II, documented that Mexico-based organized crime drug groups had moved beyond the role of transporters and were involved in wholesale-level cocaine distribution in the United States. Once transported from Mexico to the United States, the cocaine was stored in the Los Angeles area for eventual distribution to buyers in such cities as Newark, New York City, and Philadelphia. Operation ZORRO II documented the increased and more diverse role played by major Mexico-based traffickers in the U.S. cocaine trade.

The multi-district, multi-agency investigations known collectively as Operation Reciprocity further revealed Mexican drug traffickers' eastward expansion across the United States and into New York City. These coordinated OCDETF investigations targeted several drug trafficking cells of the Amado Carrillo-Fuentes Organization. Seizures of drugs and money as well as other evidence clearly demonstrate that Mexican traffickers are displacing at least some of the Colombian cocaine organizations which have traditionally dominated drug trafficking along the East Coast of the United States. Operation Reciprocity resulted in the seizure of 7.4 tons of cocaine, 2,800 pounds of marijuana, and over \$11 million in U.S. currency. Indictments and complaints charging 48 people with drug and money laundering offenses are pending in four districts. Thirty-five defendants have been arrested.

*Marijuana.*—Mexico-based drug trafficking organizations, through extensive networks in both Mexico and in the United States have supplied the U.S. drug market with marijuana and heroin for more than 20 years. From distribution hubs along the Southwest Border, wholesale distributors ship marijuana to cities along the Eastern seaboard using a wide and ever-changing array of motor vehicles, as well as couriers aboard commercial aircraft.

In addition to overland smuggling, traffickers have resumed routing large quantities of marijuana from Mexican suppliers and other sources through the Caribbean region, to destinations along the East Coast. Package delivery services also have been identified as a significant means of transporting marijuana from Southwest Border areas to destination cities throughout the Eastern United States.

*Methamphetamine.*—Although methamphetamine use has historically been concentrated in the western and southwestern parts of the United States, it is now spreading to the Midwest and to the East. Organized crime drug groups operating from Mexico are responsible for producing a significant amount of the methamphetamine distributed throughout the United States. Methamphetamine distributors in other areas of the country, including the Northeast, obtain much of their meth-

amphetamine from these organizations operating along the Southwest Border. One recent investigation revealed that distributors in Buffalo, New York, were acquiring pound quantities of methamphetamine from sources in the San Diego, California area and shipping the drugs via express mail services back to the Buffalo area.

*Heroin.*—The heroin market in the northeastern United States is largely dominated by high-purity, white powder heroin from South America, Southeast Asia, and Southwest Asia. Mexican black-tar and brown heroin is usually of lower purity and therefore, is generally not competitive in this market. As a result, Mexican heroin is encountered in the Northeast in only isolated instances.

#### METHAMPHETAMINE LABS

*Question.* Would you help the Committee understand how you are addressing the growing problem of methamphetamines?

*Answer.* Halting the trafficking of methamphetamine is one of DEA's leading enforcement priorities. In May of 1995, while attending the annual meeting of the International Association of Chiefs of Police (IACP), Narcotics and Dangerous Drug Committee in San Diego, Administrator Constantine was approached by California Narcotics Officers Association (CNOA) members as well as personnel from the California Bureau of Narcotics Enforcement (CBNE). These groups dramatically brought to the Administrator's attention the magnitude of the methamphetamine problem in California and also shed light on additional evidence of what their fellow state and local law enforcement officers across the country were confronting.

At the same time, DEA was developing information on some very disturbing national trends. Our agents and intelligence analysts became aware of increasing incidents of abuse and trafficking of methamphetamine all across the country, an alarming change to what had once been largely perceived as a West Coast problem.

For example, drug abuse warning network statistics revealed that methamphetamine-related hospital episodes were skyrocketing. From 1990 to 1995, they more than tripled. In fact, the dramatic increase of methamphetamine-related deaths in cities such as Los Angeles, San Diego and Phoenix strongly supported the concerns of the CBNE and CNOA. Also startling was the fact that similar statistics were being compiled in America's heartland (and across the rest of the United States).

Based on these findings, it was clear that methamphetamine was fast becoming a national problem, and a national approach was needed. As a result, in February 1996, DEA sponsored a National Methamphetamine Conference in the Washington, DC area, the first of its kind. The Conference included the participation of 240 attendees from across the nation, including representatives from Federal agencies, state police and investigative agencies, police departments in large and small cities, and sheriff's offices in both rural and urban counties. In addition, professional law enforcement organizations also sent representatives, including the IACP, the National Sheriffs' Association, the National Association of District Attorneys, the Clandestine Laboratory Investigators Association, the National Narcotics Officers Association and the National Drug Enforcement Officers Association. Invitations were also sent to numerous prevention and treatment professionals.

In the past, the methamphetamine trade was dominated by members of loosely structured outlaw motorcycle gangs. Today, all of this has changed. It has become increasingly clear that we are now dealing with an entirely different element. Methamphetamine production is now controlled by international organized criminal groups from Mexico who are responsible for the wholesale distribution of methamphetamine across the United States.

Clandestine laboratories, operating in the United States (mostly in California) and in Mexico are the primary source of the methamphetamine available in our country today. Mexican organized crime groups frequently establish large laboratories capable of producing from 150 to 200 pounds of methamphetamine during a 48-hour manufacturing cycle. There are hundreds of other labs across the United States—in the Midwest, the Southeast, as well as in the Southwest and California—which are operated on a smaller scale, but are no less a threat to the well being of Americans. In many of these smaller labs, methamphetamine manufacturers rely on ephedrine and pseudoephedrine products to make methamphetamine.

Some of the big names in methamphetamine trafficking are already known as major traffickers of heroin and cocaine: the Amezcua-Contreras Organization, the Amado-Carillo Fuentes Organization, and the Arellano-Felix Organization. These new, international organized crime groups are far more wealthy, powerful and connected than the outlaw motorcycle gangs could have ever imagined.

We know, for example, that the Amezcua-Contreras Organization has developed international connections in Europe, Asia and the Far East, to provide ton-quantity shipments of the chemicals they need to make methamphetamine. DEA has docu-

mented the international diversion of 170 metric tons of ephedrine to Mexico from mid-1993 to early 1995. This quantity of ephedrine could have produced 120 tons of methamphetamine.

In a 1994 case, two ephedrine shipments totaling 5.7 metric tons, were seized at the Dallas-Fort Worth Airport bound for Mexico. This ephedrine could have produced almost four tons of methamphetamine. The ephedrine had been produced in China and was smuggled from Hong Kong through Long Beach, California, into Mexico.

With their ability to obtain wholesale multi-ton quantities of precursor chemicals on the international market, their access to already-established smuggling and distribution networks, and their control over laboratories capable of large-scale production and distribution of methamphetamine, these criminal groups from Mexico now dominate wholesale methamphetamine trafficking in the United States.

Since February 1996, when DEA co-sponsored the first National Methamphetamine Conference, our nation has made significant progress in working together on the methamphetamine problem. Following the President's announcement of the National Methamphetamine Strategy in April 1996, DEA has refocused its attention and adjusted its resources accordingly.

The National Methamphetamine Strategy incorporates the recommendations from a broad spectrum of the law enforcement community. It recognized that in order to tackle the methamphetamine and precursor chemicals problem, the government must adopt a multi-disciplinary approach, including legislation, law enforcement, training, chemical regulation, international cooperation, environmental protection, education, and treatment. Therefore, the Strategy called upon the collective wealth of experience and expertise of the Departments of Defense, Education, Health and Human Services, Justice, State, and Treasury, the Environmental Protection Agency, the Office of National Drug Control Policy, and other noted experts and scholars.

First, we had to recognize that methamphetamine trafficking was an organized crime problem. American law enforcement agencies have successfully attacked organized crime in this country and abroad by aggressively targeting its leadership and persistently attacking its membership at all levels. It is a model that has a proven track record, and we are now successfully applying it to the methamphetamine problem and the organized criminal groups controlling the drug's trade. This strategy includes the following elements.

- Department components are attacking organized crime groups through the Southwest border initiative [SWBI]. The SWBI is an integrated, coordinated strategy that involves law enforcement at the Federal, state and local levels in a focused effort to dismantle the sophisticated trafficking organizations operating on both sides of the United States-Mexico border.

Since 1996, DEA has contributed over \$17 million, supporting over 100 organized crime investigations in over 30 cities. Over 1,000 wire taps, including almost 400 this year alone, have been employed to identify and incarcerate the members of these criminal groups. Much of the focus of this effort has been directed at those groups trafficking in methamphetamine. Since January of 1996, methamphetamine investigations under the SWBI umbrella have accounted for the seizure of 682 pounds of methamphetamine and the arrest of over 150 members of organized crime groups.

- DEA refocused its investigative resources to address the methamphetamine problem in other parts of the country. In 1996, DEA conducted over 2,500 methamphetamine investigations, up from approximately 1,700 actions in 1995. In the 1998 budget, we have requested over \$11 million and 74 positions to further enhance our ability to combat the methamphetamine threat.

- One of the major concerns expressed by state and local law enforcement officers at last year's Conference was the need for specialized training to conduct clandestine laboratory investigations. In response, DEA increased clandestine laboratory training schools from 7 in 1996, to 13 in 1997. By the end of this year, 540 state and local officers will have been trained, with another 800 projected for next year.

- DEA has expanded its clandestine laboratory certification program in Quantico, Virginia, by adding training facilities in Kansas City, Missouri and San Diego, California. This regionalized approach will allow training to be provided to more officers and to be tailored to the particular needs of the affected area.

- We are developing a National Clandestine Laboratory Data Base located in the El Paso Intelligence Center [EPIC], in partnership with the California Bureau of Narcotics Enforcement [CBNE] and the Western State Intelligence Network, to assist law enforcement across the nation in methamphetamine investigations.

- This year, DEA has earmarked \$850,000 to initiate Special Enforcement Programs directed at the methamphetamine problem. We have already seen some

tremendous successes in investigations developed in one of these programs, Operation Backtrack. This program targets "rogue" companies which provide three specific precursor chemicals to illegal methamphetamine laboratories in the United States; ephedrine, pseudoephedrine and phenylpropanolamine. Started in February, this program has already resulted in seizures of over 10.5 million pseudoephedrine tablets destined for distribution by "rogue" convenience and liquor stores. The DEA Domestic Operations Section instituted a Special Enforcement Program entitled Operation Velocity, which targets major methamphetamine organizations as well as independent traffickers in the United States.

—Our San Francisco Methamphetamine Conference emphasized the need for government and industry to work more closely together. To help accomplish this, DEA invited 98 senior executives to attend a meeting in Arlington, Virginia, on June 16. The invitees represented industry associations, major wholesale distributors, manufacturers, and retail distributors. The meeting provided a forum for DEA and the affected industry to further develop cooperative efforts to identify and prevent the diversion of legal drug products containing key precursor chemicals. Working groups were formed to address the following areas: (1) identify points of diversion; (2) technological issues; and (3) training and education programs. DEA and industry officials are acting as co-facilitators for each of the working groups which are expected to meet again within the next 30 days.

As an example of how effective cooperation between government and the business community can be, DEA formed a partnership with Wal-Mart in April to control large-scale purchases of two key over-the-counter products: pseudoephedrine and phenylpropanolamine. This means Wal-Mart will now restrict sales of allergy/cold/diet preparations which have increasingly been diverted from legitimate use and seized in clandestine laboratories throughout the West, Southwest and Midwest.

In other examples, Price Costco in California and Schuck's Markets in St. Louis have both initiated voluntary programs to control diversion of over-the-counter products.

—Finally, in order to reduce methamphetamine abuse, the Partnership for a Drug-Free America will run a media campaign to educate young people on the dangers of methamphetamine. The Partnership will feature prime-time television commercials, magazine advertisements, and other educational material aimed at our nation's teens. DEA will produce and distribute posters, awareness brochures, and a video on methamphetamine abuse.

In addition to these major initiatives, DEA will participate in an interagency prevention group formed by the Attorney General to work with local agencies and private organizations in developing public awareness programs about methamphetamine addiction and abuse.

In conclusion, methamphetamine presents a serious threat that will impact heavily on both our law enforcement community, as well as our prevention and treatment specialists. There was a time when many thought the heartland would never suffer the ravages of drugs, crime and violence. In addition to aggressive law enforcement actions, it will take an all-out effort in our schools, communities, and workplaces to educate all Americans, especially our young people, about the dangers of methamphetamine.

Over the past year and a half, we have seen many positive developments in the national fight against methamphetamine trafficking, use and abuse. As a nation, we have worked to develop a national strategy and have implemented many new programs to attack both methamphetamine production and use. We must, however, continue to move forward to ensure that we prevent the onslaught of another drug epidemic, one which could be even more serious than the crack epidemic experienced in our recent past.

#### COLOMBIA

*Question.* What is the United States' position on Colombia? A reasonable person might suggest we take quite a bit stronger action toward Colombia based on the performance of its president and what is being sent to the United States from Colombia. What does it take to tell us that this government is an adversary? Based on Samper's statements, what opportunities do we have at this time?

*Answer.* The Administration's position with respect to Colombia remains under constant review by the National Security Council and other relevant government agencies.

While the U.S. Government is convinced that the Samper Administration has been tainted by the traffickers, DEA has continued to expand its work and contacts

with the Colombian National Police (CNP). DEA's position on Colombia continues to focus on a cooperative bilateral law enforcement effort to combat the threat of drug trafficking affecting both countries. The Department of Justice has continued to work with the Colombian Chief Prosecutor's Office and many agencies joined to urge the Government of Colombia to enact the legislative reforms in money laundering, asset forfeiture, and enhanced narcotics penalties now in place. The U.S. Government continues to press Colombia for the extradition of its nationals—especially, the narcotics kingpins.

The demise of the Cali Cartel can be largely attributed to the dedicated efforts of the CNP under the direction of General Serrano, working in conjunction with DEA and other U.S. agencies. Nevertheless, we now see the emergence of other powerful trafficking organizations from other parts of the country, including the Norte Del Valle group headed by the Henao-Montoya brothers. As soon as the Cali Cartel crumbled, such groups forged ahead to position themselves smartly in the drug trafficking markets and developed close alliances with Mexican and other trafficking groups to achieve the common goal of distributing illicit narcotics—namely, cocaine and heroin—on the streets of the United States.

In 1995, Colombian-processed heroin represented 62 percent of the heroin seized in the United States. In cooperation with the CNP and other Colombian law enforcement authorities, DEA has implemented several new programs and enhanced other initiatives targeting the production and transportation infrastructures of the major trafficking organizations.

*Question.* How will decertification affect Colombia?

*Answer.* DEA will defer to the State Department with regard to the effect that decertification will have on Colombia.

On a law enforcement level, the initial decertification of Colombia in early 1996 forced the Government of Colombia to focus its efforts more acutely in cooperating with the United States in the fight against the spread of illicit drugs. These efforts resulted in operational successes and in meaningful legislative reforms. The effects of the subsequent decertification in 1997, however, remains to be seen.

In recent years, the Colombian National Police and DEA have forged a strong bond with common objectives and mutual goals. Our law enforcement officers have continued to work uninterrupted and effectively, despite the Administration's decision to de-certify Colombia. To illustrate this point, on June 26, 1997, the CNP, with the assistance of the DEA, seized more than 2,500 kilograms of cocaine in Puerto Rey, Department of Cordoba, Colombia. Also, on March 11, 1997, the CNP seized more than \$4 million in assets (including sophisticated communications equipment) owned by the Cali Cartel. These seizures are a direct result of continued outstanding bilateral cooperation between the CNP and DEA.

*Question.* It appears that the heroin market is expanding because of the ease with which it is manufactured and supplied. What is your plan to stop the expansion of this market?

*Answer.* The expansion of the heroin market in the United States is the result of several factors. While drug abuse was on the rise across the board in the 1970's, the use of heroin was stigmatized and its popularity was held in check. Due to the low purity of heroin available at the retail level, the only effective method of administration at the time was through injection, a method that most drug users found unpalatable and not the least glamorous.

Today, heroin is readily available and is much purer than in years past. In the 1970's and early 1980's, the purity of heroin at the retail level averaged between 2 and 7 percent. Now, it is not uncommon to find heroin as high as 80 percent pure being sold on our streets. According to results of DEA's Domestic Monitor Program, the nationwide average purity for retail heroin from all sources was 39.7 percent in 1995, over five times higher than a decade ago. At this purity level, heroin can be administered effectively through several methods, all far more alluring than injection and safer than using dirty needles. Snorting, and to a limited extent, smoking, also called "Chasing the Dragon," are the preferred methods of ingestion by first-time and casual users. However, as the user gains tolerance, more heroin is needed for the high and snorters and smokers soon turn to injection.

The second and probably the single greatest reason for the emergence of heroin is its portrayal as what is being called "heroin chic" by members of the entertainment and fashion industry. A recent article in Newsweek magazine reported that the fashion industry is seen as glamorizing the junkie look in fashion photos and shows. In the last several years, many people in the film and music industry have been associated with heroin.

The annual number of heroin-related emergency room mentions increased from 34,000 in 1990 to 76,000 in 1994. The Cornell University Hospital reports the number of middle class people requesting treatment for heroin addiction has increased

tenfold in the past two years. According to the Office of National Drug Control Policy, about 50 percent of users seeking treatment in 1995 used needles. During 1996, according to a sampling of large treatment programs in selected cities, that figure was up to 75 percent. As the addict population grows older, that figure can be expected to increase. Those users injecting heroin now have the highest rate of new HIV infection. Further exacerbating the problem is the fact that when novices accustomed to other methods of administration switch to needles, the high quality of heroin that is often available on the street greatly increases the risk of overdose. Between 3,000 and 4,000 heroin abusers die of overdoses annually.

According to the DEA's Heroin Signature Program results in 1995, South America was the predominant source area for heroin seized in the United States for the first time, accounting for 62 percent of the total heroin analyzed, an increase over the 1994 total of 32 percent. High grade Colombian heroin is smuggled into the United States by couriers who use ingestion or body carries to get the drug into the country, mostly in one-to-three kilo quantities. Aggressive interdiction programs at Miami International Airport and New York's JFK Airport have accounted for nearly half of all samples analyzed.

There is no question that heroin produced in and controlled by groups in Colombia is being aggressively marketed throughout the Northeast, and more recently, the Midwest. These two areas have, by far, the largest portion of the heroin addict population in the United States. Colombian traffickers have been attempting to make inroads into the United States heroin market for several years. Reports of substantial opium poppy cultivation in Colombia began in 1990. By 1992, couriers from Colombia with one to two kilograms of heroin were being arrested on a regular basis at Miami International Airport and JFK.

Within the United States, the same groups who are distributing cocaine are now also trafficking in heroin. To compensate for their late entry into the heroin trade, and to establish themselves in the marketplace, Colombian traffickers provided high-quality heroin, 80 to 99 percent pure, to a fiercely competitive market where high purity is essential to establishing a clientele and maintaining user loyalty. To further entice customers, they offered their product at cut-rate prices. Heroin prices have been relatively stable for years. High-quality Southeast Asian heroin costs \$150,000 to \$200,000 per kilogram, and Southwest Asian heroin, not consistently as pure as that from the Golden Triangle, sells for approximately \$120,000 to \$150,000 per kilogram. Lesser quality Mexican heroin is often priced under \$100,000 per kilogram, but because of its inconsistent quality and black tarry appearance, it has never gained popularity outside the West and Southwest regions of the United States.

Colombian traffickers began offering their highly pure product at \$90,000 per kilogram and gave perspective customers free samples to get a foothold. Other methods used to establish market share were to allow customers to take multiple kilograms on consignment, and forcing cocaine customers to accept quantities of heroin along with their cocaine shipment as a condition of doing business. The other dilemma faced by these traffickers was a lack of connections to the mid-level wholesalers in the urban heroin trade, which they quickly solved by enlisting Dominican gangs to bridge the gap. This was a natural choice due to the Dominican nationals having already established ties in this area through their position as mid-level cocaine wholesalers. We have seen these independent groups using similar tactics in other major cities such as Boston and Detroit, where they are pushing high-grade heroin on to the streets, at extremely low prices to wrest the heroin trade from Middle Eastern and Mexican traffickers.

Because the heroin industry is more decentralized and diversified than the cocaine trade, a different approach is necessary to blunt the impact of growing heroin problems. DEA's primary enforcement strategy is to identify those individuals and organizations within the United States responsible for heroin trafficking, and to target these individuals and organizations, with the ultimate goal of arresting them. DEA also seeks to ensure that these drug traffickers serve long sentences and to provide follow-up effort in source countries to identify and incarcerate the sources of supply.

Domestically we are targeting our investigative resources at the organized Chinese and Nigerian gangs who control the Southeast Asian heroin. In 1995, the Chicago Field Division identified a Nigerian Cell operating in Chicago that was receiving 20 kilograms of heroin monthly from Bangkok and redistributing it to street gangs in Chicago. All of this heroin was smuggled into the country in five-kilogram quantities concealed in suitcases; most couriers were female of either British or American nationality and under the age of 25. Through an interagency effort including DEA, USCS, and other agencies, we were able to arrest 21 individuals belonging to this relatively small cell of violators. In conjunction with the USCS, we are also

intensifying our interdiction efforts at key international airports, and through our cooperation with state and local officials around the United States, supporting Operation Pipeline, an interdiction effort targeted at cocaine and heroin being moved cross country via passenger vehicles.

The response to the expanding heroin market must be a comprehensive effort, addressing prevention and treatment in addition to interdiction and enforcement. In recent months, several significant enforcement operations have been initiated to address the expanding heroin problem, particularly in the northeastern and southeastern United States where heroin from South America has had the greatest impact. For example, in New York City, the nation's largest heroin market, DEA's New York Field Division has been monitoring the distribution of heroin in the metropolitan New York area and the proclivity of many organizations to identify their particular brand of heroin by stamping brand names on the glassine envelopes containing the heroin. The use of brand names allows the organization to package its product in a manner clearly designed to facilitate market loyalty and discourage competitors from infringing on their customers. Examples of common brand names found on the streets of New York City are being found in upstate communities as well, highlighting the scope of the current heroin problem affecting New York and the rest of the country. In addition, because South American heroin is transported to Puerto Rico directly from Colombia as well as through other nations in the Caribbean Basin, the San Juan Field Division has initiated a five-year plan—designated as a priority within the Caribbean Strategy—to coordinate major heroin trafficking investigations in its area of responsibility.

The DEA hosted a National Heroin Conference in Reston, VA, February 3–6, 1997. This conference served to heighten the awareness of law enforcement personnel, from around the country, to the increasing heroin threat. DEA is in the process of developing Special Enforcement Operations aimed at heroin traffickers. DEA realizes that enforcement initiatives are not the only way to address this problem. We also need to reduce the demand for heroin. DEA's Demand Reduction Program seeks to alert the public to the real dangers of heroin. DEA's Demand Reduction Program is trying to reach the youth of America through programs in schools and national youth groups such as Boys and Girls Clubs and the Boy Scouts of America. The Demand Reduction Program shows gritty, real-life films depicting the dangers of heroin abuse. It will take a combination of strong law enforcement pressure and the education of our youth to the dangers of heroin to curb the expansion of the heroin market.

The heroin problem facing the United States at the current time is serious and must be addressed quickly to ensure that we do not have another epidemic, as we had with crack in the 1980's. The recent overdose deaths and coverage of the heroin issue in the press have focused attention on heroin, and I believe that is the first step if we are committed to addressing this issue seriously. DEA continues to work diligently at home and overseas to dismantle the world's most significant drug trafficking organizations. We appreciate the support we have been given from the Congress, and we look forward to working with Congress in the coming years to ensure that our nation's citizens are safe and free from the drug scourge which has taken far too many lives.

#### PUERTO RICO

*Question.* What can the Committee do to help you with the challenges you have in Puerto Rico?

*Answer.* DEA has determined that drug trafficking organizations are responding to the increased enforcement along the Southwest Border by increasing their use of the Caribbean and South Florida points of entry to move their product to United States markets. DEA estimates that the Eastern Caribbean is now the second most active drug trafficking route into the Western Hemisphere. Another reason for the Caribbean's re-emergence as a significant trafficking area may be in part a result of the United States's recent success against the Cali leaders.

Current manpower and resources in the Caribbean do not compare with those in the Southwest Border, and the task at hand is no less daunting than that of the Southwest Border. The congressional committee would be able to assist the Caribbean Field Division of DEA by: strengthening its manpower, both agents and support staff; providing greater air support to the region; providing additional technical equipment and vehicles necessary to improve intelligence gathering and surveillance; and increasing the training for state, local and foreign law enforcement agencies. Many of these items are being considered at the Department of Justice as part of the 1999 budget request.

## QUESTIONS SUBMITTED BY SENATOR PETE V. DOMENICI

## IMMIGRATION AND NATURALIZATION SERVICE

## NATURALIZATION APPLICATION INCREASE—INTERACTION WITH WELFARE REFORM

*Question.* Currently, there are naturalization waiting lists of over 2 years in some jurisdictions. After the Welfare Reform Bill of last year, non-citizens had a grace period of a year to complete the naturalization process before being terminated from the welfare rolls.

How much of the influx in applications is due to non-citizen affected by the Welfare Bill?

*Answer.* The Immigration and Naturalization Service (INS) does not have information available about why people naturalize. The current surge in citizenship applications appears to be the result of several factors, including the passage of the Welfare Reform Law, changes in INS procedures, as well as a significant increase in the number of eligible persons. In fiscal year 1997, INS anticipates as many as 1.8 million naturalization applications, up from 1.2 million in fiscal year 1996. During the next 3 years, the INS expects applications to increase by approximately 300,000 to 400,000 per year, for a total of more than one million additional applications.

*Question.* How many of those who will be affected by the Welfare Bill and eligible for citizenship, will be able to be naturalized within the next two years if we accept the President's recommended levels?

*Answer.* The INS does not have data regarding the number of non-citizen who may be affected by the Welfare Reform Law and who are eligible for citizenship. Some of this information may be available from the Social Security Administration or the Food Stamp Program.

## AFFIDAVITS OF SUPPORT AND PUBLIC CHARGE BONDS

*Question.* Last year's immigration bill made the affidavit of support for sponsored immigrants legally binding and emphasized the use of "public charge" bonds.

How many people have been admitted into the country under a sponsorship arrangement since enactment and how many public charge bonds were collected?

*Answer.* Most family immigrants admitted since enactment of legislation have had nonlegally binding affidavits of support filed on their behalf. The new legally binding affidavit of support and the implementing regulation are currently being reviewed within the Administration and will be promulgated in the near future, with implementation beginning, as provided in statute, 60 days later. During this period, the INS will print the new form and with the State Department, disseminate it to INS offices and consular posts worldwide. Sponsors must obtain, complete, and file the new legally binding affidavits of support on behalf of prospective immigrants who file applications for immigrant visas or adjustment of status beginning on the effective date.

The public charge bond pilot described in Section 564 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, is currently being designed for implementation in five INS Districts. Under this pilot program, certain family-based immigrants in the selected five districts will be required to post public charge bonds in addition to having affidavits of support filed on their behalf. Beginning 9 months after implementation of the pilot, as required by statute, the Attorney General will report on the effectiveness of the pilot program.

*Question.* Have there been any court challenges to making the affidavit of support legally binding?

*Answer.* We are not aware of any legal challenges to this new requirement. The Service, however, has not yet promulgated the new affidavit of support form; nor have the related regulations entered into force. The need for extensive and in-depth consultation with other agencies has prevented the Service from meeting the implementation date specified by the statute. The new requirement will not enter into force until the form and regulations are promulgated. Consequently, no one has been affected by the new requirement in a way that would give them standing to challenge the requirement.

## SPECIAL IMMIGRANT STATUS FOR CERTAIN JUVENILES

*Question.* At a recent Subcommittee hearing at which the Attorney General testified, I asked her to examine a provision adopted in the 1990 Immigration Act entitled "Special Immigrant Status for Certain Juveniles." At that time it was my belief that this provision was being severely abused by certain students who come to the United States from foreign countries on student visas. During the hearing with the

Attorney General, she informed the Subcommittee that she would look into the matter and report back to us.

Madam Commissioner, as your staff has been looking into the issue of Special Immigrant Status for Certain Juveniles in support of the Attorney General's commitment to this Subcommittee, do you have anything to report back to us about it at this time?

Answer. Yes. Balancing the issues related to the best interests of a juvenile alien and the deference owed to state juvenile courts who are experienced in dealing with juvenile issues with the immigration enforcement mandate of the INS has been a difficult task. Although we believe that the intent of the provision was to assist abandoned, neglected, or abused children with no lawful immigration status, the language of the provision contains no such limitation and is open to the interpretation that it is available to other juveniles.

#### NATURALIZATION BACKLOGS

*Question.* In New Mexico, I have one constituent, a Holocaust survivor, who married a GI and immigrated to the United States 50 years ago. She has since been widowed. Having married a United States serviceman, this woman has long been under the mistaken impression that she was a United States Citizen. Recently, however, she received a letter from the Social Security Administration indicating that she is not in the agency's records as being a citizen. She is now anxious to naturalize.

I must thank the distinguished Subcommittee Chairman and his staff for assisting me in monitoring this ongoing situation. I also thank you for the detailed responses you gave to my several questions on this issue last year.

I know that the Department is currently undergoing the deployment of additional Border Patrol agents and other law enforcement and support personnel along the border. The interim plan now being implemented also redeploys some 200 Border Patrol agents to the Southwest border. I understand that this deployment plan will be finalized this month under the original schedule.

Commissioner Meissner, could you give the Subcommittee a brief review of the interim deployment plan for Border Patrol agents and support personnel?

Answer. The INS is in the process of deploying 714 Border Patrol agents and 100 support staff of the new personnel received in fiscal year 1997. Chart A lists these positions by state. The deployment plan for the remaining 286 Border Patrol agents has recently been approved as submitted in the original deployment schedule.

CHART A.—DEPLOYMENT OF FISCAL YEAR 1997 BORDER PATROL AGENT (714) AND SUPPORT (100) POSITIONS

Sector/State/Station	Border patrol agents	Support	Total
Del Rio, TX:			
Bracketteville .....	5 .....		5
Carrizo Springs .....	5 .....		5
Eagle Pass .....	27 .....	1	28
Sector HQ .....	.....	5	5
Total .....	37	6	43
El Centro, CA:			
Calexico .....	24 .....		24
El Centro .....	12 .....		12
Sector Headquarters .....	.....	3	3
Total .....	36	3	39
El Paso, NM:			
Deming .....	13 .....		13
Las Cruces .....	13 .....	2	15
Santa Theresa .....	26 .....		26
El Paso, TX:			
El Paso .....	21 .....		21

CHART A.—DEPLOYMENT OF FISCAL YEAR 1997 BORDER PATROL AGENT (714) AND SUPPORT  
(100) POSITIONS—Continued

Sector/State/Station	Border patrol agents	Support	Total
Sector Headquarters .....		5	5
Total .....	73	7	80
Laredo, TX:			
Laredo North .....	18		18
Laredo South .....	16		16
Sector Headquarters .....		6	6
Total .....	34	6	40
McAllen, TX:			
Brownsville .....	81	1	82
Harlingen .....	30		30
McAllen .....	28		28
Mercedes .....	20		20
Harlingen .....		2	2
Kingsville .....		1	1
Sector Headquarters .....		12	12
Total .....	159	16	175
Miami, FL: Miami Station .....		1	1
Detroit, MI: Sector Headquarters .....		2	2
New Orleans, LA: Sector Headquarters .....		1	1
Ramey, PR: Ramey .....	8	1	9
San Diego, CA:			
Brownfield .....	7		7
Campo .....	6	1	7
Jacumba .....		1	1
Chula Vista .....	7		7
El Cajon .....	6	1	7
Sector Headquarters <sup>1</sup> .....	175	26	201
Total .....	201	29	230
Tucson, AZ:			
Douglas .....	90	3	93
Nogales .....	76	2	78
Naco .....		1	1
Wilcox .....		1	1
Sector Headquarters .....		9	9
Total .....	166	16	182
HQ, SC: Charleston Training Facility .....		5	5
HQ, PA: National Firearms Unit .....		1	1
HQ, TX: El Paso Flight Operations .....		2	2
Blaine, WA: Blaine Sector Headquarters .....		2	2
Yuma, CA: Yuma Sector Headquarters .....		1	1
WOR, CA: Regional Office .....		1	1
Service-wide total .....	714	100	814

<sup>1</sup> All trainees will EOD at San Diego Sector HQ and further be assigned primarily to the mainline stations.

*Question.* Of the 1,000 new agents approved for fiscal year 1997, how many have actually been deployed?

*Answer.* Of the 1,000 new Border Patrol agents, Congress has approved the deployment of a total of 714 positions.

*Question.* How many of these agents are being sent to the El Paso sector for New Mexico?

*Answer.* The El Paso Sector received 73 of the 714 Border Patrol agents, 52 of the 73 were deployed to New Mexico stations.

*Question.* How many Border Patrol agents (BPA), investigators, and support personnel are currently deployed in New Mexico? Would you please provide this information by station?

*Answer.*

	BPA	Investigators	Support
Lordsburg .....	26	.....	1
Truth or Consequences .....	12	.....	1
Las Cruces .....	80	2	6
Alamogordo .....	55	.....	2
Carlsbad .....	3	5	1
Deming .....	85	1	2
Silver City .....	2	.....	.....
Albuquerque .....	2	12	.....
Santa Teresa .....	100	.....	1
<b>Total</b> .....	<b>365</b>	<b>20</b>	<b>14</b>

*Question.* Of the remaining agents to be deployed (286), how many do you anticipate will be deployed to New Mexico?

*Answer.* In June 1997, the INS reevaluated each sector's operational needs and made final recommendations to the Appropriations Committees. The recommendations were approved as submitted, which means that New Mexico stations will receive another 24 Border Patrol agent positions.

*Question.* The Border Patrol deployment plan is scheduled to be finalized in April. Is the Department on schedule to complete that in April?

*Answer.* The INS submitted a proposed deployment plan for the remaining 286 Border Patrol agents to the Appropriations Committees in June. That plan was approved as submitted.

*Question.* Could you please provide the Subcommittee with the final distribution of the 200 redeployed Border Patrol agents including where they were transferred from and where they were actually redeployed?

*Answer.* The INS has moved 73 Border Patrol positions to the Southwest border with an additional 127 workyears of redirected border control activities. This will improve the overall border control capability of the Border Patrol by 200 agents. Chart B provides the locations of redeployment.

CHART B.—REDEPLOYMENT OF BORDER PATROL AGENTS—NEW AGENTS AND REDIRECTED WORK-YEARS

Border Patrol Sector	Redirected Work-years	Positions Deployed to Border	Total
Buffalo, NY .....	0.4	.....	0.4
Detroit, MI .....	1.5	.....	1.5
El Paso, TX .....	21.6	4.0	25.6
Marfa, TX .....	12.4	.....	12.4
McAllen, TX .....	4.2	29.0	33.2
Havre, MT .....	3.3	.....	3.3
Miami, FL .....	3.8	.....	3.8
New Orleans, LA .....	1.0	.....	1.0
Tucson, AZ .....	6.8	9.0	15.8
Yuma, AZ .....	9.6	.....	9.6
Houlton, ME .....	.8	.....	.8
Swanton, VT .....	.....	.....	.....

CHART B.—REDEPLOYMENT OF BORDER PATROL AGENTS—NEW AGENTS AND REDIRECTED WORK-YEARS—Continued

Border Patrol Sector	Redirected Work-years	Positions Deployed to Border	Total
Del Rio, TX .....	10.9	.....	10.9
Laredo, TX .....	7.1	.....	7.1
El Centro, CA .....	6.6	.....	6.6
San Diego, CA .....	4.6	31.0	35.6
Livermore, CA .....	20.0	.....	20.0
Mayaguez, PR .....	.3	.....	.3
Spokane, WA .....	7.0	.....	7.0
Blaine, WA .....	4.2	.....	4.2
Grand Forks, ND .....	.9	.....	.9
Total .....	127.0	73.0	200.0

*Question.* Has the Department backfilled the positions as it committed to do when the Border Patrol agents were transferred to the front lines of the border? What is the status of this initiative?

*Answer.* The INS assigned 93 investigative positions to 30 locations as backfill for the investigative functions previously performed by Border Patrol agents in the redeployment plan. Vacancy announcements for the investigative positions were announced the first quarter of fiscal year 1997. Selections were made for 70 positions, with the balance to be selected shortly. Of the 70 selections, 57 (81 percent) were Border Patrol agents from the interior stations.

*Question.* What is your current assessment of the law enforcement staffing situation in New Mexico?

*Answer.* The INS will continue to support the staffing requirement and distribution of overall resources to meet the operational needs for all INS offices including New Mexico. On-board staffing levels within New Mexico have increased 76.4 percent since fiscal year 1994 (from 212 positions to 374 positions). In fiscal year 1997, the New Mexico stations received the initial deployment of 52 Border Patrol agents and will be considered in the final deployment of the pending 286 agents. According to the 5-year staffing plan, New Mexico will receive increased resources through fiscal year 2000.

*Question.* How would the additional Southwest border resources requested in the President's budget affect New Mexico and your assessment of the law enforcement situation in New Mexico?

*Answer.* The President's budget for fiscal year 1998 requested a total of 550 positions (500 Border Patrol agents and 50 support positions). The 5-year staffing plan proposes that an additional 50 positions of the requested increase of 500 Border Patrol agents be directed to New Mexico for fiscal year 1998.

#### VIOLENT CRIME REDUCTION TRUST FUND

##### \$1.4 BILLION CUT IN VCRTF AFTER 1999 PROPOSED BY THE PRESIDENT

*Question.* The President's Budget proposes additional funding for the INS, Drug Enforcement Administration, and Federal Bureau of Investigation (FBI) out of the Violent Crime Reduction Trust Fund (VCRTF). Would you characterize the Violent Crime Trust Fund spending as funds to support ongoing programs or one-time investments?

*Answer.* The fiscal year 1998 budget request supports ongoing programs within INS. The request includes 1,641 positions, 1,530 full-time equivalent (FTE) employment and \$510.6 million for budget base spending, which is for ongoing activities previously approved by the Congress. These include border control, the Institutional Hearing Program, the detention of criminal and other deportable aliens, and continuing information resource management activities. The increases requested, which would be funded by the VCRTF in fiscal year 1998, include 1,163 positions, 611 FTE and \$221.6 million. If approved by the Congress, the increases would require continuing funding support beyond fiscal year 1998.

Funding appropriated for the FBI under the VCRTF is used for both ongoing programs and for one-time investments. For example, in 1997, the FBI was appropriated \$20,240,000 for the National Instant Check System. That amount was a one-

time-only investment for system development and does not recur in the President's 1998 budget request for the FBI. Beginning in 1996, the FBI was also appropriated \$5,500,000 for forensic DNA programs. This requirement is recurring and is included in the President's 1998 budget request. For 1998, the President's budget proposes a total of \$171,121,000 of VCRTF for the FBI, of which \$30,959,000 is for program increases and \$140,162,000 is for ongoing programs.

Funding appropriated for the DEA under the VCRTF can be used for one-time investments, but primarily is used for ongoing programs. For example in fiscal year 1996, DEA funded many on-going programs with the VCRTF funds, including: domestic heroin programs, MET Teams, contract linguists, ADP programs, and advanced telephony base for equipment purchases. For fiscal year 1997, DEA is funding its entire State and Local Task Forces Decision Unit and the funds received for the Source Country/International initiative with its VCRTF funds.

*Question.* After 1999, the President proposes overall reductions of \$1.4 billion in the VCRTF. Can you tell the Committee which programs will be terminated or scaled back after the dip in funding?

*Answer.* The reduction in the VCRTF is a result of the completion of the Community Oriented Policing Services program. By 2001, all authorized funding for this program will have been provided and the program is expected to have met the goal of providing another 100,000 community policing officers to the states and localities. Other funding from the VCRTF is expected to continue.

#### QUESTIONS SUBMITTED BY SENATOR KAY BAILEY HUTCHISON

##### IMMIGRATION AND NATURALIZATION SERVICE

##### BORDER PATROL AGENT INCREASES

*Question.* The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 requires the number of Border Patrol agents to increase by 1,000 per year through the year 2001. However, the Administration has requested an addition of only 500 agents in fiscal year 1998. I have written to the President and Attorney General and you on this matter. What have you done, or intend to do, to seek an increase in the number of Border Patrol agents from 500 to 1,000, as mandated by the 1996 Immigration Act?

*Answer.* The INS is requesting 500 new Border Patrol Agents for fiscal year 1998, even though the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) specifies that the Border Patrol is to increase by 1,000 new agents every year for the next five years. Over the past four years, between fiscal year 1993 and fiscal year 1997, the Border Patrol Program's budget has more than doubled. In addition, the number of Border Patrol agents has increased from 3,965 on-board at the end of fiscal year 1993 to an estimated on-board strength of 6,859 agents by the end of fiscal year 1997. The addition of 500 new Border Patrol agent positions in fiscal year 1998 would bring the total to 7,359. This figure represents an 85 percent increase over the fiscal year 1993 total and will exceed the ambitious goal of 7,000 that the President had previously announced. The sustained growth of the Border Patrol into fiscal year 1998, and the number of additional agents requested in the fiscal year 1998 budget, clearly demonstrates the President's continuing commitment to a strong enforcement presence at the border.

These 500 new agents will allow for responsible, manageable growth of the Border Patrol and further improve our ability to control our Nation's borders. This level of measured growth will allow us to maintain integrity in our law enforcement activity. An increase of agents at a level greater than this would outstrip the supervisory and support staff available and jeopardize the integrity and efficiency of INS's law enforcement efforts. While the growth in the Border Patrol is clearly important, it is also important that the Service's infrastructure, which supports not only the Border Patrol, but all other Service programs as well, has a balanced growth with the Border Patrol. Over the past four years, the growth of the Service's infrastructure has not kept pace with the growth of the Border Patrol. The fiscal year 1998 budget, while continuing to add additional Border Patrol agents to a level that exceeds the President's previous commitment, places emphasis on the increased resource needs of INS infrastructure that are vital to maintaining a strong, effective, and properly equipped Border Patrol.

##### BARS TO REENTRY

*Question.* Under the 3-year/10-year rule, which took effect on April 1 of this year, those in the U.S. illegally for 6 months or more, will be barred from re-entry to the

U.S. for 3 years. Those here illegally for over a year will be barred from re-entry for 10 years. Beginning October 1, 6 months from the effective date, your agency will take on this additional duty to bar re-entry of those persons, as mandated by Congress. How do you plan to implement this law barring re-entry for 3 or 10 years? Do you plan to publicize it?

Answer. Interim guidelines have been provided to the field for implementing the new grounds of inadmissibility found in sections 212(a)(6)(A) and 212(a)(9) of the Immigration and Nationality Act ("the Act"), as amended by IIRIRA. The effective date for each of these sections is April 1, 1997. Sections 212(a)(6)(A) and 212(a)(9) do not apply to applications for admission or adjustment of status adjudicated by an immigration judge in deportation or exclusion proceedings commenced prior to April 1, 1997. Except as otherwise required by law, these grounds of inadmissibility apply at the time of any other administrative determination regarding admissibility, including but not limited to the issuance of a visa, inspection of an alien at a port of entry, disposition of an application for admission by an inspector or an immigration judge, or adjudication of an application for adjustment of status. Further guidance will be released and proposed regulations published in the Federal Register at a later date.

The following addresses the general implementation of the sections of law, the manner in which time "unlawfully present" in the United States is measured, and the effect of these grounds of inadmissibility on applications for adjustment of status.

#### *I. General Implementation Issues*

As a preliminary matter it is noted that the section 212(a)(6)(A) ground of inadmissibility applies to any alien present in the United States without having been admitted or paroled, but the 212(a)(9) grounds of inadmissibility only apply to aliens who have previously physically departed the United States and are now either seeking admission or have entered or attempted to enter the United States without being inspected. Therefore, section 212(a)(6)(A) does not apply to visa applicants outside of the United States, but section 212(a)(9)(B) does apply to visa applicants outside of the United States who previously did accrue sufficient unlawful presence in the United States. Likewise, section 212(a)(9) does not apply to aliens seeking adjustment of status in the United States who have not previously departed the United States. Aliens will not be able to avoid the consequences of unlawful presence by claiming that their re-entry after their previous physical departure was brief, casual and innocent.

Section 212(a)(6)(A) of the Act provides that "an alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmissible." Written into the section is an exception for battered spouses and children. The battered spouse exception will be applied to both women and men.

Section 212(a)(9)(A)(i) of the Act provides that aliens who have been ordered removed from the United States through expedited removal proceedings or removal proceedings initiated on the alien's arrival in the United States and who have actually been removed (or departed after such an order) are inadmissible for 5 years. Section 212(a)(9)(A)(ii) of the Act provides that aliens who have been otherwise ordered removed, ordered deported under sections 242 or 217 of the Act or ordered excluded under section 236 of the Act and who have actually been removed (or departed after such an order) are inadmissible for 10 years. Aliens who have been removed more than once are inadmissible for 20 years and aliens who have been convicted of aggravated felonies are permanently inadmissible. The provision holding aliens inadmissible for 10 years after the issuance of an exclusion or deportation order applies to such orders rendered both before and after April 1, 1997. In this context, it should be noted that pursuant to section 101(a)(13)(C) of the Act, permanent residents often are not regarded as seeking admission upon return to the United States. The statute does include an exception to the 212(a)(9)(A) ground of inadmissibility for those who have, prior to their return to the United States, obtained consent from the Attorney General to reapply for admission. The Service is considering a regulation or policy that would grant this exception to aliens excluded or deported prior to April 1, 1997, who had either been subsequently lawfully admitted to the United States or granted an immigrant or nonimmigrant visa prior to the effective date of the new, lengthier prohibitions against readmission. In the interim, applicants who have already remained outside of the United States for the one or five years required under pre-IIRIRA law, in the absence of other adverse discretionary factors, should be granted advance consent to reapply for admission. Those who have been convicted of an aggravated felony are eligible to apply to the Attorney General for consent to reapply for admission but remain subject to all other ap-

plicable grounds of inadmissibility. All requests for such a waiver should be filed on Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal.

Pursuant to section 212(a)(9)(B)(I)(i) of the Act, aliens “unlawfully present” in the United States for more than 180 days but less than one year who subsequently depart from the United States voluntarily prior to the initiation of removal proceedings under section 235(b)(1) or section 240 are inadmissible for a period of 3 years. For purposes of this section, “voluntarily departed” includes any departure by an alien from the United States prior to the initiation of removal proceedings, whether or not pursuant to an order of voluntary departure issued by the Service. Pursuant to section 212(a)(9)(B)(I)(ii) of the Act, those aliens “unlawfully present” in the United States for one year or more, who depart or are removed and then seek admission are inadmissible for 10 years. The Attorney General may waive inadmissibility under section 212(a)(9)(B) in the case of an immigrant who can show that refusal of admission would result in extreme hardship to the alien’s spouse or parent who is a citizen or lawful permanent resident. The Service will retain authority to grant the extreme hardship waiver in consular cases (with no administrative appeal available); however, those seeking admission at a Port-of-Entry who seek such a waiver will be referred to an immigration judge (with administrative appeal to the Board of Immigration Appeals, as part of an appeal of a removal order). Form I-724, Application to Waive Inadmissibility Grounds and Permission to Reapply is being designed to accommodate this provision.

Pursuant to section 212(a)(9)(C) of the Act, aliens who were unlawfully present in the United States for an aggregate period of more than one year and subsequently departed or who were previously ordered removed (and actually left the United States) and have subsequently either entered the United States without inspection or sought to enter the United States without inspection are permanently inadmissible. The statute makes an exception for aliens who seek admission more than 10 years after their last departure who have obtained advance consent from the Attorney General to reapply for admission. This ground of inadmissibility applies only to aliens who have attempted to re-enter or actually have re-entered the United States without being inspected and admitted or paroled.

## *II. Measuring Time “Unlawfully Present”*

When determining whether sections 212(a)(9)(B) and (C) of the Act are applicable in a particular case, Service officers will be required to determine the length of time that an alien spent “unlawfully present” in the United States prior to their initial departure. A number of factors are relevant to this calculation.

When is an alien unlawfully present? The first question in every case will be whether an alien has been previously “unlawfully present” in the United States. By statute, “an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.” See Section 212(a)(9)(B)(ii) of the Act. The Service interprets time “unlawfully present” to include any time spent in the United States by aliens after they have violated the terms and conditions of any form of non-immigrant status, because time spent in violation of status is not authorized.

For purposes of section 212(a)(9)(B), time in “unlawful presence” begins to accrue on April 1, 1997. For example, although an alien may have been in the United States illegally for one year prior to April 1, 1997, as of April 2, 1997, the same alien has accrued only one day of “unlawful presence” for purposes of section 212(a)(9)(B). For purposes of section 212(a)(9)(C), time in “unlawful presence” may accrue prior to April 1, 1997. Thus, the same alien who would only have one day of unlawful presence for purposes of section 212(a)(9)(B) on April 2, 1997, would have one year and one day of “unlawful presence” for purposes of section 212(a)(9)(C). In addition, when measuring time spent “unlawfully present” in the United States, the time is measured cumulatively for purposes of section 212(a)(9)(C), but not for purposes of section 212(a)(9)(B). For example, an alien who was “unlawfully present” in the United States for 5 months, departed the United States, returned, and was “unlawfully present” for 2 more months would have accrued 7 months of “unlawful presence” for purposes of section 212(a)(9)(C), but not for purposes of section 212(a)(9)(B).

Unlawful presence may be triggered either by overstaying the time authorized or by entering into an activity that violates the terms or conditions of status. For example, an alien present on a visitor visa begins to accrue unlawful presence on the day that he or she enters into unauthorized employment. Unlawful presence is also triggered by the commission of a criminal offense that renders an alien inadmissible or removable.

When does an alien stop being unlawfully present? Once an alien goes out of status, he or she is “unlawfully present” until the Service restores status or he or she leaves the United States. Service policy governing restoration of status will be disseminated under separate cover.

Section 212(a)(9)(B)(iii) enumerates instances in which an alien does not accrue “unlawful presence” for purposes of section 212(a)(9)(B):

1. Time in which an alien is under 18 years of age.
2. Time during which an alien has a bona fide application for asylum pending (unless the alien was employed without authorization at any time during the period that the application was pending).
3. Time during which an alien is a beneficiary of family unity protection.
4. For those admitted or paroled—time during the pendency of a non-frivolous application for change or extension of status (up to a maximum of 120 days).
5. Those who qualify as a battered spouse or child as provided in section 212(a)(9)(B)(iii)(IV) of the Act.

These exceptions are not applicable when considering “unlawful presence” for purposes of section 212(a)(9)(C).

The exception for up to 120 days during the pendency of an application for change or extension of status only applies when the application is submitted prior to the expiration of status by a person who has been lawfully admitted or paroled into the United States, and includes not only time during the pendency of an application for “change or extension” of status but also time during applications for “adjustment” of status.

An alien who is “unlawfully present” continues to accrue time as such while in removal proceedings. See 8 CFR section 239.3. Likewise, the grant of voluntary departure by the Service or an immigration judge will not stop the running of time “unlawfully present.” However, time in certain forms of Attorney General “sanctioned” status will not count in measuring time unlawfully present. By proposed regulation, this will include refugees admitted under section 207 of the Act, aliens granted asylum under section 208 of the Act and aliens granted cancellation pending adjustment of status. The proposed regulation addressing these groups will be specific in nature and not leave “sanctioned” status open to broader interpretation. Aliens with pending change or extension of status applications after the 120-day period and aliens present but not yet removed after a final removal order will not be considered to be in a period of stay “authorized by the Attorney General.”

### *III. Impact of these Grounds of Inadmissibility on Applications for Adjustment of Status*

Aliens inadmissible pursuant to 212(a)(6)(A) of the Act are eligible to apply for adjustment of status under section 245(i) of the Act. However, aliens inadmissible pursuant to section 212(a)(9) of the Act are ineligible for adjustment of status under section 245 of the Act, subject to the waiver and exception provisions of those grounds of inadmissibility.

The INS plans to issue a regulation in June to implement the re-entry bar provisions. The regulation will be a proposed rule with a public notice and comment period.

#### EXTENSION OF SECTION 245(I)

*Question.* Under Section 245(i), those here illegally can now adjust their status without leaving the country. The filing fee paid under 245(i) has provided INS with additional resources. However, Section 245(i) will lapse on October 1, requiring all those not “in status” or here illegally to leave the U.S. in order to adjust their status. What accommodation in your budget have you made for the fact that there will be no Section 245(i) application fees in fiscal year 1998? Do you intend to seek an extension of 245(i), which undermines the effect of the bars to re-entry?

*Answer.* The INS fiscal year 1998 budget includes a provision to extend Section 245(i) indefinitely. Therefore, the fiscal year 1998 budget for the Examinations Fee Account assumes that Section 245(i) will be extended.

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QUESTION SUBMITTED BY SENATOR BEN NIGHTHORSE CAMPBELL

CONSOLIDATION OF THE FEDERAL LAW ENFORCEMENT TRAINING CENTER

*Question.* Commissioner Meissner, as you know, there is a Memorandum of Understanding (MOU) in place regarding the future consolidation of the Federal Law Enforcement Training Center (FLETC). This MOU also includes the future disposi-

tion of FLETC satellite facilities. Could you please provide the Subcommittee with INS progress towards fulfillment of its obligations under the MOU?

Answer. The MOU is still being finalized. We are presently negotiating with FLETC about technical requirements put forth in the MOU.

We are using Charleston as a satellite facility because FLETC did not have the capacity to meet our training requirements. When FLETC has the capacity to meet our training requirements, INS has every intention of returning to FLETC at Glynnco, Georgia.

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#### QUESTIONS SUBMITTED BY SENATOR ERNEST F. HOLLINGS

##### IMMIGRATION AND NATURALIZATION SERVICE/FEDERAL BUREAU OF INVESTIGATION

##### FINGERPRINTS/IMMIGRATION

*Question.* There has been a great deal of controversy over the failure of the Immigration and Naturalization Service (INS) and the Federal Bureau of Investigations (FBI) to conduct fingerprint checks of immigrants applying for citizenship. Apparently, as many as 100,000 immigrants were naturalized without checks to ensure that they do not have criminal records.

I remember in 1994 that the INS proposed to stop having the FBI make fingerprint checks altogether in order to save \$3 million. Well Senator Byrd and I wrote to Janet Reno and put a stop to that.

But now, 4 years later, it appears that the INS began developing a naturalization project called "Citizenship USA" that still had the same fingerprint problems that Senator Byrd and I highlighted three years ago.

Commissioner Meissner, did the INS notify the FBI that it was concerned about the backlog of naturalization applications and that your agency was planning to shorten its application process and therefore would be assuming that if the FBI had not contacted INS within 60 days, that the application was okay?

Answer. After the February 1994, Office of Inspector General report on weaknesses in the INS fingerprint clearance process, INS began frequent meetings with the FBI. At these meetings the increase in naturalization receipts, and the Citizenship USA plan to reach a 6-month processing goal was discussed. In addition, the growing INS processing backlog, subsequent to implementation of new quality assurance fingerprint processing procedures, was addressed with the FBI, and led to INS/FBI plans to enhance the electronic transfer of data between the two organizations.

*Question.* Director Freeh, did the FBI ever inform INS that it would be unable to meet the 60 day requirement?

Answer. Yes. The ability of the FBI to meet a 60-day requirement was discussed at operational working levels between individuals of both agencies. This issue was not, however, discussed between senior levels of FBI and INS management.

*Question.* Did you ever tell INS to hold up and not proceed?

Answer. No. INS was often advised by the FBI that it could not handle the volume of naturalization work on an expedited basis, and that the FBI could not guarantee any particular response time.

*Question.* Much is made of this DIAP or Director of Investigative Agency Policy mechanism that was established to coordinate Justice agency programs. Does the DIAP deal with technology and criminal background checks?

Answer. No, to date the DIAP has not addressed the issue of fingerprint technology and criminal background checks.

##### FINGERPRINT CARD BACKLOG

*Question.* I recently read where the FBI's fingerprint identification operation is overwhelmed and that there is a backlog of 2.8 million fingerprint cards to be processed. According to one media report, the FBI has fallen at least three months behind on completing checks on criminal suspects and background checks on teachers, child care providers, security guards, private investigators, bank employees, and others who must have an FBI fingerprint check.

What is the status of the fingerprint card backlog?

Answer. On May 19, 1997, the backlog of fingerprint cards was in excess of 2,600,000.

*Question.* How long does it take to process a criminal fingerprint card? A civil fingerprint card?

Answer. As of May 19, 1997, it took an average of 148 days from the time a criminal fingerprint card was received by the FBI, until a response was returned. As of

May 19, 1997, it took an average of 36 days from the time a civil fingerprint card was received by the FBI, until a response was returned.

There are several reasons why it takes more time to process a criminal fingerprint card than a civil card. Only nine percent of the civil fingerprint cards received are identified or matched up with criminal history records. Since the identification rate is low, the civil cards are processed more quickly because there are fewer steps involved in the processing of cards when there is no identification.

Conversely, approximately 65 percent of the criminal fingerprint cards submitted are identified or matched up with existing criminal history records, which increases the number of steps involved in the processing of these fingerprint cards.

The Criminal Justice Information Services (CJIS) Division has over 35 million fingerprint cards in its master criminal history file. When a current fingerprint submission is matched up with a criminal record, an employee has to physically pull a paper fingerprint card from the criminal file and compare it with the current fingerprint card submitted for identification to determine if they are identical. These existing cards in the master criminal file are then refiled.

After the current fingerprint cards are identified, the current arrest record is added to the existing criminal history record. If the current print is identical with a non-automated criminal record, that record has to be pulled and converted to the automated format.

*Question.* How did the backlog grow to such high levels and what actions have the FBI taken to eliminate the backlog?

*Answer.* The average fingerprint cards received daily by the FBI is at the highest level since World War II. One of the primary causes of the increase in fingerprint card submissions is new legislative requirements at the state and Federal levels for fingerprint checks to be conducted for licensing and employment purposes. Listed below are the daily average receipts for all fingerprint cards received by the FBI during fiscal year 1994 through 1996, and fiscal year 1997 to date:

*Average cards received daily*

1994 .....	34,992
1995 .....	39,334
1996 .....	45,520
1997 .....	55,038

In the fourth quarter of fiscal year 1995, the CJIS Division reduced the backlog of fingerprint cards from 1,200,000 to approximately 850,000 by using overtime extensively. Due to the Government-wide shutdown that occurred during the first quarter of fiscal year 1996, the CJIS Division was unable to work any overtime and the backlog once again began to increase. Furloughs during the first quarter of fiscal year 1996 prevented other Federal Government agencies from processing and submitting their fingerprint cards on a regular basis. This resulted in the highest daily average receipts of fingerprint cards in recent history during the second quarter of fiscal year 1996.

The FBI's CJIS Division uses a fingerprint card processing system, the Identification Automated System (IDAS), that was built to process approximately 31,000 fingerprint cards daily, with occasional "spikes" in daily receipts up to 37,500 cards. This system was also designed to have a staffing level of 3,045. Although the IDAS processing capability has continually improved, the staffing level assigned to fingerprint card processing has diminished while workloads have increased remarkably.

Due to the relocation of the CJIS Division to its new fingerprint identification facility in Clarksburg, West Virginia, the CJIS Division has encountered a major decrease in its experienced staff (1,675 at the beginning of 1997 versus 2,310 at the beginning of 1996). Hundreds of highly experienced fingerprint examiners and others decided not to relocate to the new facility and either left the FBI or found positions elsewhere at FBI Headquarters. These employees were replaced with new personnel who are in training but will require time to develop necessary expertise.

Additionally, during the first quarter of fiscal year 1997 the FBI received a Congressional subpoena to recreate years of prior work produced for the INS special project.

The FBI has taken several actions to eliminate the backlog:

- The FBI is hiring 1,100 new CJIS Division employees in fiscal year 1997 to assist in fingerprint-related matters at the West Virginia facility. The majority of these employees will be trained to process fingerprint cards and related criminal history record data/information.
- As of March 31, 1997, the FBI has hired 490 employees of the 1,100 CJIS employees.

—The CJIS Division's fingerprint processing staff continues to work extensive overtime of over 20,000 hours a pay period. The continuation of this overtime utilization is viewed as a short-term solution.

—The FBI's incremental development of its new fingerprint identification system, the Integrated Automated Fingerprint Identification System (IAFIS), will enable it to process fingerprint cards more quickly beginning with IAFIS "Build C," a stand alone Image Storage and Retrieval Element, by the first quarter of fiscal year 1998. The time saved by digitally storing and retrieving fingerprints for comparison and other technical advancements in this early delivery by IAFIS will allow the FBI to continue to address the reduction of the fingerprint card backlog and eventually eliminate the backlog entirely.

*Question.* Does reducing the criminal backlog receive priority?

*Answer.* No. The entire backlog is of concern to the FBI. Approximately 50 percent of all receipts are criminal and 50 percent are civil. They are both entered proportionately into the process. However, civil prints move through the process much faster, due to the fact that only 8 to 10 percent are identified with existing criminal records. Comparatively, 65 percent of criminal prints are identified with previously existing records. The higher "hit" rate for criminal prints requires lengthening processing time and more personnel resources to compare the incoming prints to those in the existing master criminal history file.

*Question.* When does the FBI anticipate having the backlog eliminated?

*Answer.* If receipts remain constant, it is estimated that with the additional 1,100 employees, the backlog could be eliminated when by IAFIS reaches Full Operating Capability (FOC) or mid calendar year 1999. Due to the uncontrollable variable of daily receipts, that estimate could be shortened or lengthened depending upon future volume. In any event, within 1 year of IAFIS FOC, the FBI anticipates elimination of the backlog.

To date in fiscal year 1997, fingerprint card receipts are averaging in excess of 55,000 per day while output is averaging approximately 52,000 per day and employee productivity per year is averaging 4,900 prints. These figures are significantly higher than fiscal year 1996 figures which averaged daily receipts of approximately 45,000 per day and employee productivity per year was at a 4,592 annual average.

These figures can, and, do fluctuate rapidly with the variances experienced in receipts and available personnel to address the workloads. As additional employees are hired, trained and become proficient in the processing of fingerprint cards, the rate of growth of the backlog will be stabilized and eventually reduced to manageable levels. This process will also be enhanced by the addition of new automated capabilities becoming available during the first quarter of fiscal year 1998.

#### MT. PLEASANT ILLEGAL ALIENS

*Question.* In your written testimony, Commissioner Meissner, I note that you are emphasizing interior enforcement. I think this is very important. Too often we think of illegal immigration as a border issue that requires resources for San Diego, Arizona and Texas. But, I can tell you that public support for your program can dissipate quickly if you don't pay attention to that interior issue.

Let me give you an example. Last summer, local police near my home in Mt. Pleasant, South Carolina arrested five individuals caught speeding on the Cooper River Bridge with open alcohol containers in the car. On further investigation, the police ascertained that these individuals were illegal aliens. They contacted INS, the nearest office of which is in Charlotte, North Carolina, and were told to let the aliens go. They weren't "criminal" aliens, and so INS wouldn't get involved. This unfortunate event eventually got the Department of Justice (DOJ) and INS a lot of bad press in my backyard.

What can be done about situations like this? Is it true that INS will only be concerned if aliens are "criminal" aliens? Could we allow the Border Patrol officers in Charleston who are training recruits to also have an enforcement role?

*Answer.* During the summer of 1996, the Mt. Pleasant South Carolina, police contacted the Charlotte, North Carolina, INS office. The Charlotte office is a sub office of the Atlanta, Georgia, INS District Office. The Mt. Pleasant Police Department (MPPD) requested that the INS assume custody of the 5 alleged illegal aliens that they had arrested for traffic violations. Charlotte is the closest INS enforcement office to the MPPD, which is 200 miles away. The INS special agents did not have information indicating whether or not the MPPD was arresting the subjects or had lodged criminal charges on which to detain them for the 5 to 7 hours it would have taken the INS agents to respond. Criminal aliens are a higher priority than aliens not convicted of crimes. Had we known that the MPPD was charging the suspects

with state violations, the INS Charlotte office would have had time to respond and to interview the suspected illegal aliens. The INS does not have the resources to respond to every alleged illegal alien arrest.

The Border Patrol is hiring and training new agents at an unprecedented rate. Both detailed and permanently assigned instructors at the Glynnco, Georgia, and Charleston, South Carolina, facilities are doing an outstanding job of meeting the challenges associated with the dramatic staffing increase authorized by Congress. These instructors are already working beyond their normal duty day to meet training schedules. At this point particularly, I believe it would significantly impact the training mission to divert these instructors to enforcement activities.

#### DRUG ENFORCEMENT ADMINISTRATION

##### PERMANENT CHANGE OF STATION

*Question.* Administrator Constantine, your fiscal year 1998 request asked for an additional \$7.8 million to establish a Permanent Change of Station (PCS) operating account of \$31 million. I find this interesting as over the last several years the Drug Enforcement Administration (DEA) has been reprogramming funds out of this account for what the agency has described "as critical law enforcement needs."

But, according to your budget justification that without this additional funding DEA will be forced to lengthen the tours of its special agent work force, which would adversely effect the quality and competency of DEA special agents, as well as pose additional concerns for the agency in the area of safety and integrity assurance.

For the last 6 years your agency has been dealing with this problem. Why with an average of 594 employee moves a year, at a cost of \$21.6 million annually does DEA need an additional increase?

What is the average cost of an agent's move—are my calculations correct, is it over \$60,000 per move? On average how often do your agents need to be moved?

Answer. During the last 3 years (1995 to 1997), there has been no reprogramming of funds out of the PCS operating account. To the contrary, due to funding shortfalls and a significant PCS backlog, which the agency only began to address in 1995 and 1996, it was necessary to make one-time reprogramming into the PCS account.

The need for the requested increase is based primarily on the increase in the number of moves. The agency averaged 594 employee moves per year between 1990 and 1996. However, the average number of moves in 1995 and 1996 was 800 per year. This is a result of the increase in permanent positions as well as backfilling managerial positions due to a large number of retirements. PCS requirements are projected to remain at this increased level.

Moving costs have also increased during the time period. The average move now costs between \$30,000 and \$40,000. Average cost per move varies from year to year with the number of new agents hired. The average cost to move a new agent is \$10,000 while moving a senior agent may cost more than \$60,000. On the average, agents need to be moved every 5 to 7 years. The maximum overseas tour for an agent is 6 years.

*Question.* Director Freeh and Commissioner Meissner, do you move your agents like the DEA? If so, how often do you move your agents and what is the cost?

Answer. All FBI agents are subject to transfer at any time to meet the organizational and program needs of the FBI. FBI agents accept the possibility of transfer as a condition of their employment. The FBI and DEA both have mobility agent transfer policies.

In general, FBI agent transfers are made to field offices that are below their authorized funded staffing level or have a critical specialty need. The FBI determines whether vacancies in field offices will be filled through first office, rotational, or Personnel Resource List (PRL) transfers to maintain an adequate combination of various investigative experience levels in a particular field office.

*First Office Transfers (new agents).*—When an agent has successfully completed new agents' training at the FBI Academy, Quantico, Virginia, he/she is assigned to one of the Bureau's field offices based on the current staffing and/or critical specialty needs. New agents may list their preference for assignment and consideration is given to their desires; however, assignment is based upon the staffing needs of the Bureau. An agent can generally expect to remain in his/her first office of assignment for a minimum of 4 years.

*Rotational Transfers.*—After completing 4 years in his/her first office of assignment and until reaching 10 years in his/her office of assignment, an agent can be considered for a rotational transfer to a second field office depending on staffing needs. Rotational transfers are usually based on reverse seniority utilizing the agent's entry-on-duty date at his/her office of assignment and the staffing level of

his/her office of assignment. The junior-most agent having served four years in his/her first office of assignment is considered first for rotational transfer.

*Personnel Resource List (PRL) Transfers.*—The PRL system was established to provide a means for agents to document a preferred office of assignment. The assignment to a preferred office is not a system of reward nor is it a guarantee. It is, however, a means by which the personnel resource needs of the Bureau may be addressed effectively while satisfying the preference of employees. This system is based generally upon seniority, consistent with the needs of the Bureau and budgetary considerations. Agents are limited to one PRL transfer during their career (with limited exceptions such as those agents who received a PRL transfer from a then-Top 12 offices [Baltimore, Boston, Chicago, Cleveland, Detroit, Los Angeles, Miami, Newark, New York, Philadelphia, San Francisco, and Washington, D.C.] to another Top 12 office prior to June 9, 1987; additionally agents receiving PRL transfers to Anchorage, Honolulu or San Juan can be eligible for a second PRL transfer.).

*Specialty Transfers.*—Specialty needs of the field offices are generally identified by the Special Agent in Charge for essential skills such as: Bureau Pilot-In-Command; Technically Trained Agent; Agent Accountant; and agents with foreign language ability. An agent who receives a specialty transfer is expected to serve in that capacity for at least 3 years.

In addition, agents are afforded cost transfers in connection with hardship requests, undercover assignments, assignment of the Hostage Rescue Team, and Executive Development and Selection Program (EDSP).

The estimated 1997 cost associated with each transfer is as follows:

New agents .....	\$12,798
Specialty/Operational/Rotational .....	\$50,115
PRL .....	\$50,115
EDSP .....	\$66,224

The following is an estimate of the number of transfers to be effected for fiscal year 1997 by the FBI:

New agents .....	1,120
Specialty/Operational/Rotational .....	214
PRL .....	214
EDSP .....	279

The INS does not have a formal agent rotation policy. Most new or enhancement agent hiring is currently done at the entry level where transfer costs are not an issue. As vacancies for higher graded positions become available, many are backfilled with local agents. However, this type of hiring is not limited to local area hiring and may require transfer funds. The INS transfers its agents to address operational requirements. The average fiscal year 1996 cost per move for a Border Patrol agent was approximately \$66,400 and for a special agent the average cost was \$75,400.

#### DIRECTOR FOR INVESTIGATIVE AGENCY POLICY [DIAP]

*Question.* Several years ago, as an alternative to the Vice President's call for consolidating the FBI, DEA, and Alcohol, Tobacco and Firearms, the DOJ created the coordinating position of the "DIAP" or Director of Investigative Agency Policies.

Could you give us some examples of DIAP accomplishments?

*Answer.* On November 18, 1993, Attorney General (AG) Reno established the Office of Investigative Agency Policies (OIAP) to increase efficiency within the DOJ and to coordinate specified activities of the Department's criminal investigative components. AG Reno selected FBI Director Louis J. Freeh as the first Director of Investigative Agency Policies (DIAP) from among the principals of the participating OIAP agencies.

Shortly after the appointment of Director Freeh as the DIAP, an Executive Advisory Board (EAB) was established to assist in the development and analysis of issues suitable for the OIAP review. The EAB consists of officials drawn from the ranks of the OIAP member agencies. These agencies include the United States Marshals Service (USMS), INS, DEA, FBI, and the Criminal Division. Although they are not members of the EAB, other DOJ components, including the Bureau of Prisons (BOP), AG Advisory Committee, and the Office of the Inspector General, participate in many of the OIAP's efforts. Senior level employees from the member agencies provide staff support to the DIAP and the EAB in fulfilling the mission of the OIAP. Although the OIAP is purely a DOJ organization, it coordinates some of its activities with the investigative agencies of the Department of the Treasury.

Several OIAP working groups have been established. These working groups unite experts who address technical matters in their areas of expertise. The working groups report to and provide advice to the EAB and DIAP.

Over the past 3 years, the DIAP has proven to be an effective policy maker and coordinator within the Department as well as with other Federal agencies. Among the achievements of the DIAP are the development and implementation of 20 resolutions. For example, some of these resolutions set forth the following:

- Directed the FBI and DEA to create a common drug intelligence database.
- Established guidelines to improve coordination of criminal overseas investigations, with respect to drug trafficking and related areas, to prevent duplication and maximize investigative efforts conducted in foreign countries.
- Established the Interagency Budget Advisory Council to develop yearly budget priorities for OIAP investigative agencies for incorporation into the Attorney General's budget guidance.
- Established guidelines regarding the use of FBI crisis management resources in the field during crisis situations to avoid duplication of efforts among agencies, while promoting safety, effectiveness, and cooperation.
- Established a uniform policy regarding the use of cooperating individuals and confidential informants.
- Established guidelines regarding the reporting and review of post-shooting incidents.
- Established guidelines regarding the use of deadly force in custodial or escape situations.
- Established guidelines regarding Federal law enforcement agencies' issuance of warnings to persons, and notification to other law enforcement agencies, of threats to life or of serious bodily injury.

*Question.* When I look around the country things seem pretty separate. The FBI is building its own new offices to be more secure. In Columbia, South Carolina, the FBI is moving out of the Federal Building downtown to a more secure building in the suburbs. But the DEA is staying in the Federal Building.

The FBI is building a new \$130 million FBI laboratory at Quantico, but the budget before us is requesting \$25 million for reconstruction of its aging labs, and the Treasury appropriations bill has a \$55 million request for a separate Bureau of Alcohol, Tobacco and Firearms (ATF) laboratory.

Can you give any examples where the DIAP has disapproved requests by law enforcement agencies and has forced consolidation and savings?

*Answer.* The DIAP created a Field Structure Working Group (FSWG) to examine the field structure of the DOJ and identify possible areas of consolidation. Based on its findings, the FSWG determined a collocation of offices would not be cost effective, efficient, and/or might not fulfill the security requirements of each agency. Another aspect of co-location is operative limitations. For example, DEA is a single mission investigative agency, whereas the FBI is responsible for multiple types of investigations. As a result of the difference in jurisdiction, access to space would be cumbersome due to differing security clearances required by each agency.

Although the OIAP has coordinated some of its activities with other investigative agencies, such as ATF, the DIAP can only make decisions regarding the activities of investigative agencies under the DOJ. Because the ATF is funded within the Department of the Treasury, the DIAP cannot make decisions regarding its appropriations request.

There are no specific examples that can be cited where the DIAP disapproved requests by law enforcement agencies. The policy of the DIAP was not to disapprove requests directly. The DIAP created working groups, which brought together experts to address technical matters in their areas of expertise, to provide advice to the DIAP and the Executive Advisory Board. This was proven to be an effective means to increase efficiency and coordinate specified activities of DOJ law enforcement agencies.

The guiding principle for the OIAP has been whether a proposed course of action would benefit our nation at large, especially the men and women of law enforcement. At the OIAP, partisan agency interests have been greatly diminished and interagency cooperation has become the norm. The OIAP's results have been the product of many persons' efforts. For example,

- The DIAP's first Resolution directed the FBI and DEA to create a common drug intelligence database to allow agents from both agencies to coordinate their investigative activities in a manner that maximizes the impact on drug targets and enhances the safety of law enforcement personnel. As a result of this resolution, millions of FBI drug records were segregated and entered into the joint FBI and DEA joint drug intelligence database. The volume of those records' integration is increasing daily.

- FBI participation was mandated at the El Paso Intelligence Center (EPIC). The FBI has permanently assigned personnel to EPIC to retrieve FBI data relative to EPIC's tactical drug enforcement mission.
- The DEA was reaffirmed as the single point of contact with foreign law enforcement officials on drug law enforcement operational and intelligence matters. FBI personnel are assigned to various offices at DEA Headquarters and certain DEA offices overseas to prevent duplication of investigative efforts and enhance drug-related investigations conducted in foreign countries.
- The role of the National Drug Intelligence Center was clarified by vesting it with primary responsibility for the DOJ strategic organizational intelligence activities relating to drug trafficking organizations.
- The use of VISA credit cards in lieu of purchase orders for transactions under \$2,500 was endorsed. The savings are estimated to be \$54 in administrative costs for every purchase made with the VISA credit card.
- The air transportation systems of the INS and USMS were merged into one system, the Justice Prisoner and Alien Transportation System (JPATS). This merger provided the DOJ, for the first time, a consolidated passenger transportation system. The objective of the merger was to take advantage of centralized management, scheduling, maintenance, and associated economies of scale for both the INS and USMS. While this implementation strategy focused on aviation system benefits, other related benefits include better and more economical use of ground transportation resources and personnel, greater combined utilization of jail/detention facilities; and reduced security risks by enabling INS and the USMS to reduce both the use of labor intensive, commercial flights and higher risk ground movements. The merger of the JPATS was also implemented with the assistance of the BOP to ensure that the air route decisions mesh with BOP's extensive ground transportation system. Additionally, the FBI also participates with a commuter type plane and pilots to support the historically under serviced mid-Atlantic/northeast corridor on a reimbursable basis. The USMS, INS, BOP, and the FBI, working in a spirit of true cooperation, have developed a transportation system with great advantages to the DOJ and as a key element in addressing the prompt deportation of criminal aliens.
- Began collocation for the servicing of DEA Official Government Vehicles (OGV's) by the FBI. For several years, the FBI has serviced OGV's for the USMS and INS. To increase efficiency and cost effectiveness, the FBI has begun servicing DEA Headquarters OGV's. This year, the FBI will begin servicing all DEA Washington, D.C., and Denver, Colorado, field office OGV's.
- Contracts were identified that are utilized by the USMS that the FBI could use to purchase authorized pepper gas spray systems and handcuffs, which resulted in estimated savings of \$223,900.

#### FBI LABORATORY MANAGEMENT

*Question.* Director Freeh, the FBI has requested \$32.6 million to complete funding for the completion of its new \$130 million laboratory located in Quantico, Virginia. We are all aware of the allegations regarding the current laboratory here downtown. The Washington Post reports that prosecutors have been notified in over 50 criminal cases that there may be problems with the quality of the lab's work. It reported that Oklahoma City suspect "Tim McVeigh may have gotten his biggest break when an internal Justice Department investigation of shoddy practices at the FBI's crime lab indicated that key evidence in the bombing case could have been tainted."

Obviously, this could affect many law enforcement agencies and cases since 10 percent of the forensic examinations are performed for state and local law enforcement.

What can you tell us about this investigation of the FBI lab and these allegations?

At our Internet child pornography hearing earlier this week, you said the lab is still the premier forensic lab in the world. Could you give us some assurance of why you believe this? I'm sure that I am not alone when I shudder to think that an accused terrorist might go free because the evidence is suspect.

Answer. Over the course of 18 months, the Inspector General conducted the most extensive investigation of the FBI Laboratory ever performed. That investigation, which focused on three of the Laboratory's units (Explosives, Materials Analysis and Chemistry-Toxicology), found serious deficiencies and errors in some of the most important cases handled by the FBI in recent years, including the *World Trade Center* case and the Oklahoma City bombing. Such deficiencies and errors are inexcusable and will not be permitted to recur. It should be noted, however, that the Inspector General found no merit to the most serious allegations made against the Laboratory. The Inspector General found no evidence fabrication, evidence tampering or

perjury. The Inspector General also found no indication of systemic contamination of evidence within the Laboratory.

Since the Inspector General's investigation began, the FBI has been working with prosecutors to ensure that the problems in the Laboratory did not compromise any case. Because of the "gag order" issued by the judge in the *Oklahoma City* case, we cannot comment directly on that matter. However, the FBI has no reason to believe that any pending or future cases will be compromised by the conduct of any Lab employee. We do not believe that any prosecutions will be declined or that any defendant's right to a fair trial will be threatened.

With respect to past cases, the FBI and the DOJ have been reviewing and will continue to review past cases involving the examiners criticized by the Inspector General. We believe that an exhaustive review of those cases is necessary to ensure that no one's right to a fair trial has been jeopardized.

At the time the Inspector General issued the final report regarding the Laboratory, on April 15, 1997, the Justice Department had provided material regarding the Laboratory to prosecutors on in approximately 55 cases. Since that time, the Justice Department has broadly disseminated the Inspector General's report, in part by publishing that report on the Internet. The FBI and Justice Department will work together closely to fulfill our legal obligation to make material related to the allegations about the Laboratory available to prosecutors for their determination as to whether information should be furnished to the defense.

The FBI remains confident in its Laboratory for several reasons. The FBI has agreed with all of the recommendations made by the Inspector General to improve the Laboratory's policies and procedures and is actively implementing the recommended changes. One such recommendation was that the Laboratory should pursue accreditation as quickly as possible, which it will do. During the accreditation process, the Laboratory will be subject to extensive external reviews, which will identify any additional improvements that might be required.

We believe that these efforts to improve the Laboratory will be greatly facilitated by the hiring of a new Assistant Director to lead the Lab. The FBI has initiated a national search for the new Assistant Director. We are seeking an individual who will have instant credibility and will be recognized as a leader both by FBI Laboratory employees and the forensic community generally. We are also seeking an individual who will bring extensive scientific and management expertise to the Laboratory.

The FBI remains very proud of its Laboratory and the dedicated men and women who serve it. A commitment to quality has always been a central part of their values and mission. The new Assistant Director for the Laboratory will work closely with the Inspector General and the Justice Department in solving all of the problems that have been identified in the FBI Laboratory. We are confident that, with their assistance, the FBI Laboratory will remain the preeminent forensic laboratory in the nation, if not the world.

#### TELECOMMUNICATIONS CARRIER COMPLIANCE

*Question.* Last year you testified that you were working with the intelligence community and other Federal law enforcement agencies to get their financial support for the telecommunications carrier compliance effort. In the 1997 Appropriations Act, we established a Fund in the Treasury to accept funding from these agencies and gave them authority to transfer funding to the Fund. Now, I see in the 1998 budget that you are asking for \$100 million for this project.

Have you received firm commitments from other agencies to transfer funds to help pay for this project? Can you tell us which agencies are providing funding and how much?

*Answer.* The Telecommunications Carrier Compliance Fund (TCCF) has received firm funding commitments from the following entities:

On January 17, 1997, the United States Postal Inspection Service electronically transferred a contribution of \$1,000,000;

In a letter dated February 28, 1997, the Department of the Treasury advised that it has identified approximately \$1,800,000 which could be transferred from the United States Customs Service (USCS) and the United States Secret Service; and

In a letter dated March 4, 1997, the DEA advised that it has identified \$15,000,000 in prior year funding that can be transferred to the Working Capital Fund for subsequent allocation to the TCCF.

*Question.* Some industry groups have written the Committee that the FBI is enhancing its wiretap capability in developing its administrative procedures outside the scope of CALEA. Could you respond?

Answer. The FBI has not developed administrative procedures that are outside the scope of CALEA. To the contrary, as part of the consultative process mandated by CALEA, the FBI has made every attempt to work cooperatively with the telecommunications industry to ensure the industry-wide implementation of the assistance capability requirements of CALEA.

In response to specific requests from the industry, the FBI, in collaboration with other Federal, state, and local law enforcement agencies, created a technical recommendation for the delivery of intercepted communications from a carrier's network to a law enforcement agency's monitoring facility. This document, entitled the Electronic Surveillance Interface (ESI), was submitted to the industry standards setting body as a law enforcement contribution and recommendation to the process. The ESI was intended to aid carriers in understanding how law enforcement conducts electronic surveillance, what information it needs, and what information it historically has received in order to properly do its job. The FBI has prepared and submitted other technical contributions to respond to industry requests for more detail on law enforcement's needs and to advance the standards process. These contributions were aimed at ensuring the integrity of evidence gathered through the use of electronic surveillance and at identifying technical options for the efficient delivery of intercepted communications and call identifying information.

Additionally, in accordance with the Section 104 provisions of CALEA, the FBI has published Capacity Notices for comment. These notices represent fulfillment of the statutory mandate to provide notice for potential future interception activity that may occur. The Second Notice of Capacity was published on January 14, 1997. Comments were accepted through March 15, 1997. The comments have been reviewed and analyzed. A Final Notice of Capacity will be issued in June 1997 that will fulfill the obligations of Section 104.

Finally, in accordance with CALEA Section 109(e), on March 20, 1997, the FBI published the Final Cost Recovery Rules for telecommunications carriers, now codified as 28 CFR § 100.21.

*Question.* Some elements of the telecommunications industry are saying that Congress should slip the date that defines "the embedded base" so that more telecommunications switches qualify under CALEA. Have you taken a position on this issue?

Answer. Law enforcement does not believe that the January 1, 1995, date should be changed as CALEA provides sufficient mechanisms for carriers to reasonably achieve compliance without being unduly burdened.

Since the \$500 million authorized for reimbursements by CALEA was intended to apply to pre-January 1, 1995 equipment, facilities and services, carriers who offer post-January 1, 1995 services may recover costs under two CALEA provisions:

- A carrier may petition the Federal Communications Commission (FCC) to determine whether compliance with the Section 103 assistance capability requirements is reasonably achievable with respect to equipment, facilities, or services deployed after January 1, 1995.
- A carrier may also petition the FCC to recover its costs expended for making modifications to equipment, facilities, and services to achieve compliance with the Section 103 assistance capability requirements.

In addition to the aforementioned provisions, a carrier may petition the FCC to receive an extension of time within which to comply with CALEA.

The equitable provisions in CALEA to seek cost recovery, extensions of time, etc., have not yet been utilized by carriers to reduce any effort that might be burdensome. Law enforcement believes these processes are more than adequate to address those circumstances in which compliance cannot be reasonably achieved. Such processes should be employed, as envisioned by CALEA, rather than seeking to change the statutory demarcation date for reimbursements globally.

#### INVESTIGATING MISCONDUCT OF FBI EMPLOYEES

*Question.* Director Freeh, the FBI has experienced a number of instances recently, such as the inquiry into the shooting incident at Ruby Ridge, the handling of Richard Jewell as a suspect in the Olympic Park bombing in Atlanta, and the examination of evidence by the FBI Laboratory, that has caused many to wonder if the FBI is capable of policing itself. The FBI is the only agency within the DOJ—and may be the only Federal law enforcement agency in the Federal Government that has its own Office of Professional Responsibility and performs its own inquiries into allegations involving the conduct of its personnel.

Recently, you made the FBI's Office of Professional Responsibility a separate office within the FBI, with direct responsibility to the Deputy Director and yourself. You also provided more staffing to the Office.

Why does the FBI require an inspection office that is separate from the Inspector General?

Answer. The FBI, like DEA and major police departments around the United States, finds that its law enforcement integrity is absolutely dependent on the agency being responsible and accountable to investigate itself, with appropriate independent oversight. Further, attorney misconduct within the DOJ is investigated by the Department's Office of Professional Responsibility (OPR), not by the Inspector General (IG).

The power and authority to identify, correct and punish misconduct is an essential part of establishing and maintaining discipline within an agency. Agency enforcement of internal discipline has inherent advantages in that knowledgeable, effective internal investigations require the expertise and initiative of agents and managers who are familiar with the FBI's structure, procedures and standards of conduct and are motivated to identify and root out misconduct. Removing that authority from agency management would, by definition, make that agency ethically irresponsible, as it could not enforce its own standards of conduct.

Agency self-policing should not be unchecked. Ample independent oversight is provided pursuant to Attorney General Reno's order of November 8, 1994. FBI employees may report allegations of improper behavior outside of the agency, and the Deputy Attorney General may assign the matter for investigation to another DOJ entity, as was done with Ruby Ridge, the Richard Jewell matter, and the FBI Laboratory. Pursuant to that order, FBI OPR reports its internal investigations to DOJ's OPR and to the IG. The IG may seek assignment of any matter by the Deputy Attorney General. Moreover, Director Freeh has not been reluctant to recuse himself in cases where his impartiality might be questioned, as when allegations, now determined by the IG to have been baseless, were made against him in connection with the FBI Laboratory investigation.

*Question.* Why did the Inspector General of Justice end up investigating the FBI Laboratory instead of the Office of Professional Responsibility? Do you think the investigation would have been handled differently?

Answer. Among the complaints about the FBI Laboratory made by Dr. Whitehurst were allegations of prosecutorial misconduct by Director Freeh and General Counsel Howard Shapiro during the VANPAC case, which involved the investigative prosecution of the murder of United States Federal Appeals Court Judge Robert Vance in Birmingham, Alabama, in December 1989. Director Freeh and General Counsel Shapiro were the Government's lead prosecutors for that case. In view of these allegations, Director Freeh recused himself and the FBI from the investigation of Dr. Whitehurst's allegations and referred the matter to the DOJ. If the FBI's OPR had continued to participate with the IG in the investigation there is no reason to believe that the results would have been any different.

#### IMMIGRATION AND NATURALIZATION SERVICE

245(I)

*Question.* Commissioner Meissner, your testimony indicates that the section 245(i) surcharge fee, which this subcommittee created in 1994, will expire this year if it is not extended—how much money would INS lose if this subcommittee does not extend the fee? What would be the impact on INS?

Answer. If Section 245(i) is repealed, the INS estimates that it will lose approximately \$129.7 million in receipts in fiscal year 1998. Section 286 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 authorized a new detention account titled the Immigration Detention Account. Receipts from this account are to be derived from the penalty portion of receipts collected under the provisions of section 245(i). The \$129.7 million estimated to be lost by the repeal of 245(i) is the same amount expected to be deposited into this Account in fiscal year 1998.

If these receipts are lost, the INS will not be able to maintain the new Detention Fund Account at a level that would fund the expenses for which it was established. Those expenses include those incurred for the detention of aliens under Sections 236(c), mandatory detention of criminals and terrorist aliens, and 241(a), mandatory detention of aliens with final orders of deportation).

#### CHARLESTON BORDER PATROL

*Question.* Commissioner Meissner, it seems to me that the Border Patrol School at the former Charleston Navy Base has been a success. We are training over 1,400 new agents this year. The community loves the Border Patrol being there and from what I have heard, the Border Patrol loves being in Charleston. The agents tell me that it has been a total success and that we are adding getting the agents trained

so that they can be deployed from Texas to California. This has been done with a minimal investment—less than we added for just firing range construction at the FBI Academy at Quantico.

The Border Patrol is in Charleston because the Federal Law Enforcement Training Center [FLETC] in Glynco, Georgia, was unable to provide the training needed to produce an additional 1,000 agents per year. I've heard that FLETC now is testifying that Charleston should be shut-down by 1999. I think they are jealous that it is so successful and cheap compared with their center.

When I look at your Border Patrol training loads and the current attrition rate, it seems to me that INS is going to need this facility for the foreseeable future.

Don't you agree? Are you conveying that viewpoint to FLETC?

Answer. The INS needs a place to train Border Patrol agents both now and in the foreseeable future. With the growth that INS has experienced in recent years, the Service will need to train Border Patrol agents in response to attrition as well as any new agents added in the appropriations process in the future. If the Federal Law Enforcement Training Center at Glynco, Georgia, cannot accommodate our training requirements, INS will continue to rely on the Charleston Border Patrol training facility to meet its needs.

#### NATURALIZATION PROCESS

*Question.* What is INS doing to ensure a naturalization process which can once again serve as a source of strength for our country—one which can be carried out efficiently and with integrity?

Answer. The present goal of the INS is to increase efficiency, improve reliability of existing systems, and switch manual processes to electronic systems. Reduction in backlogs in fiscal year 1996 was addressed by increased resources at district offices and use of service centers. In November 1996, the INS began the enormous task of improving the quality and consistency of the naturalization process. Steps to strengthening control of the naturalization process include: standardization of the work process; fingerprint integrity checks; enhanced supervisory review of naturalization adjudications; and implementation of a standardized quality assurance review program. By these measures, the INS intends to maintain the goal of timely processing of naturalization applications without compromising the integrity of the naturalization process.

*Question.* What does INS consider to be a reasonable period of time in which to naturalize without compromising the integrity of that process, and when does INS expect to reach that goal throughout the country?

Answer. Given the re-engineering that is currently taking place within the naturalization program, it is difficult to set a firm processing goal until the results of the re-engineering efforts are known.

*Question.* What does INS need to carry out this important duty, and to get it done right?

Answer. INS continues to work in conjunction with the FBI to improve the fingerprint clearance process. INS is preparing a two-part reprogramming proposal as a part of its overall efforts to improve the naturalization process. The first reprogramming proposal, which will be forwarded for your consideration in the coming weeks, requests approval to fund mandatory expenses, i.e., FBI fingerprint charges, overtime and records support, contract costs, and costs of conducting ceremonies. This funding will allow INS to address immediate needs in order to keep the program on course. In June, INS will forward a reprogramming proposal that will focus on new initiatives, currently being explored, to improve the overall effectiveness of the naturalization program and improve customer service. Mr. Robert Bratt has been named Executive Director of Naturalization Operations and is leading the INS effort to improve overall efficiency of the program. Mr. Bratt is working to ensure the integrity of the naturalization process and to lay the groundwork for a complete re-engineering of the naturalization process at INS.

#### MEXICO/COLOMBIA

*Question.* Administrator Constantine, you have testified before the Foreign Relations Committee that Mexico is dominated by organized crime and that law enforcement officials are on the payroll of the drug cartels. I respect you for going on record that you could not certify that Mexico was cooperating with us in the war on drugs.

Now with respect to Colombia, my understanding is that DEA has developed a close working relationship with the Colombian National Police, its commander General Serrano, and the chief prosecutor Alfonso Valdivieso. You have testified that the Colombians have made great strides to support our anti-narcotic programs.

Now, United States policy doesn't seem to make sense to me. President Clinton certified that Mexico is cooperating but he continued to decertify Colombia. Does that make sense to you? I mean doesn't that undercut the progress that you have made in Colombia and send the wrong signal to the Mexican officials?

You and the FBI have extensive efforts underway to build evidence and get indictments against Mexican drug barons and cartels. How many outstanding indictments do we have now? What has been the response of the Mexican government?

Answer. Once again, DEA will defer to others within the Administration regarding the certification decisions.

Currently, the United States has indicted many of the major Mexican drug traffickers in the U.S., in the hope that they will someday be extradited to this country. Further, we have identified a list of priority extradition cases upon which we have requested that the Mexican law enforcement authorities act most vigorously and expeditiously.

On a law enforcement operational level, DEA is working with the Mexican authorities to develop a credible, corruption-free law enforcement system in their country (as described above). The Government of Mexico must combat corruption at both senior as well as operational levels of government. Corruption jeopardizes the integrity of the entire Mexican counternarcotics program, and recent and ongoing anti-corruption programs will be the most important aspect of future efforts. While there has been some progress in removing corrupt personnel from law enforcement and military agencies, greater steps must be taken to ensure that Mexico has a credible law enforcement regime.

DEA has dedicated significant resources to assist in the Mexican efforts in the following ways: (1) the selection of new candidates to Mexican counterdrug enforcement agents; (2) the "vetting" process of new Mexican agent recruits; (3) training programs for Mexican counterdrug agents; (4) the Border Task Forces in Juarez, Tijuana, and Monterrey; (5) the Organized Crime Unit; and (6) the creation and establishment of Mexico's new Special Prosecutor's Office for Crimes Against Health (FEADS).

The problems of establishing a corruption-free law enforcement infrastructure are large, but not insurmountable. However, to develop a credible and trustworthy law enforcement capability, the Government of Mexico must ensure the integrity of the units that have the responsibility of tracking down and arresting the drug syndicate leaders, ensuring these individuals are either prosecuted in Mexico and receive meaningful sentences commensurate with their crimes, or alternatively, that they are extradited or expelled to the United States and brought to justice. The best approach is, in simple words: to work with people we feel we can trust, based on the best information we have at the time; and to design safeguards in our operations should they later be compromised.

*Question.* Operationally, is there anyone that you can trust on the Mexican side?

Answer. United States law enforcement efforts, despite hopeful beginnings over the last several years, have been frustrated by the absence of secure and effective Mexican counterpart agencies with whom to work cooperatively. The recent arrest of the head of the Mexican INCD (the principal Mexican federal drug law enforcement agency) on charges of assisting cartel leaders further underscores the obstacles presented when drug-related corruption is pervasive. The disbanding of the INCD was recently announced by Mexico. An Organized Crime Unit was recently formed within the Mexican Attorney General's Office. This unit is staffed by fully vetted agents. The formation of this new vetted unit, coupled with broad changes to Mexican law to allow more investigative tools for the agents assigned to it, will likely improve Mexico's ability to prosecute traffickers. However, for effective efforts against traffickers to exist there must be evidence that long-lasting criminal justice institutions within Mexico have been formed.

Answer. With regard to the issue of the trustworthiness of Mexican officials, on occasion, there have been a few Mexican officials with whom DEA can work. However, they are few and far between. The Government of Mexico has been wrestling with widespread incidences of corruption among law enforcement officers for decades. DEA Agents have been forced to operate in a manner that requires a continual weighing of the pros and cons of passing information to Mexican counterparts. Much of the information is sensitive and cannot be passed unless there are persuasive reasons to believe in the integrity of the involved Mexican unit. The situation is exacerbated by the reality that, although we work with certain counterparts who have demonstrated a high degree of integrity, we have no control over the chain of command and eventual dissemination of our information.

No better example of this dilemma can be demonstrated than that of former INCD Commissioner, General Gutierrez-Rebollo having had line authority over the Sensitive Investigative Unit (SIU). The SIU was vetted in order to serve as an inves-

tigative arm to provide Mexican follow up to significant United States counter-narcotics investigations. Since the SIU ultimately reported to Gutierrez-Rebollo, their vetting was seriously imperiled if not rendered useless.

The problems of establishing a corruption-free law enforcement infrastructure are not insurmountable. To become credible in the law enforcement arena, the Government of Mexico must ensure the integrity of the units that have the responsibility of arresting the syndicate leaders, thereby ensuring these individuals are either prosecuted in Mexico and receive meaningful sentences commensurate with their crimes, or agree to extradite them to the United States where they will receive punishment similar to that of Juan Garcia-Abrego.

Since March of this year, DEA has made considerable efforts to further develop working relationships with its Mexican counterparts. DEA assisted the GOM in the restructuring of Mexico's primary drug law enforcement agency. This new agency, the Special Prosecutor's Office for Crimes against Health, was established on April 30, 1997 and replaced the corruption ridden National Institute to Combat Drugs (INCD). DEA is committed to assist the GOM in the vetting and training of the members of this new agency. DEA has already successfully "vetted" approximately 50 new recruits, 40 of whom are scheduled to attend DEA's second four week specialized narcotics training course for vetted units commencing July 14, 1997 in Leesburg, Virginia.

#### FENFLURAMINE DESCHEDULING

*Question.* Administrator Constantine, I have been contacted by several members regarding a diet drug called fenfluramine. Apparently, the DEA was asked to deschedule this drug in 1991. The Food and Drug Administration gave its approval in September 1995 and the Department of Health and Human Services formally recommended descheduling to the DEA in June 1996. Both agencies found that there are no scientific evidence of abuse potential, patterns of abuse or diversion. However, DEA has not approved descheduling.

Why? What are DEA's reasons for not allowing descheduling of fenfluramine?

If there are no further reasons to hold up on approval, when do you anticipate letting the drug be approved?

*Answer.* The Controlled Substances Act (CSA) requires that the DEA consider all relevant data to determine whether there is substantial evidence of abuse potential so as to warrant control or decontrol of a substance. After a thorough review of all available data, including the recommendation of the Department of Health and Human Services and abuse, trafficking and diversion data, the Deputy Administrator of the DEA has determined that at this time there is insufficient data to establish that fenfluramine has a potential for abuse, which warrants control under the CSA. Accordingly, the Deputy Administrator signed a Federal Register notice proposing to decontrol fenfluramine. This proposal was published during the week of May 5, 1997. Interested parties will be provided a 60-day opportunity for comments and requests for a hearing.

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#### QUESTIONS SUBMITTED BY SENATOR FRANK R. LAUTENBERG

##### IMMIGRATION AND NATURALIZATION SERVICE

##### DETENTION REPRESENTATION PROJECT

*Question.* I am proud to acknowledge that the INS District in New Jersey has worked with a coalition of local voluntary organizations to create a program through which asylum-seekers detained at the Elizabeth Detention Facility can obtain legal counsel. This initiative is known as the "Detention Representation Project," and has helped ensure that individuals with asylum claims are not returned to their persecutors. At the same time, the project has been useful to the INS, in that detainees without a basis for relief from removal are so advised by legal counsel by voluntary agencies, and are therefore less likely to crowd the overburdened immigration dockets with meritless claims. Through the project, legal representation is provided to indigent detainees without any cost to the government.

With the implementation of the "summary removal" provisions of the new immigration law beginning on April 1 of this year, the Detention Representation Project has taken on even greater importance. Without the legal representation, which the project provides, many fear that asylum-seekers would inadvertently be delivered back into the hands of their persecutors by our government.

Since January of this year, the agencies which founded the Detention Representation Project have been trying to pursue the project with the INS District in New

York. These agencies had hoped to launch the project in New York before the opening of the new Wackenhut Detention Facility in Queens, and certainly before the onset of Summary Removal this past April 1. New York INS had been unresponsive to the many overtures of the voluntary agencies until after Wackenhut had opened and summary removal has been implemented.

I am concerned that this problem may be representative of a larger phenomenon; namely, that the immigration laws of this country, and the due process protections afforded to those fleeing from persecution, vary from INS district to INS district.

Please tell me what prevented the New York District from cooperating with the voluntary agencies, as has been done in the New Jersey District, prior to the opening of Wackenhut and the implementation of summary removal. Was INS Headquarters aware of this initiative, and if not, why not? If INS was aware of this initiative, why was INS New York allowed to drag its feet in implementing the project in a timely fashion? What, if anything, is INS Headquarters doing to encourage such private-public partnerships at the local level, in order to ensure that summary removal proceedings do not summarily deprive asylum-seekers of due process?

Answer. I have been advised that representatives of our District Office in New York City and the Catholic Legal Immigration Network (which includes other volunteer agencies), have communicated with one another and have also participated in a meeting (on April 22) during which related issues were discussed. It does not appear to us that there actually is a misunderstanding between those offices, or a lack of cooperation.

At the meeting on April 22, a schedule for pro bono legal representation was presented for the next three months, with the first representation taking place on April 29, by Ms. Mary McClenahan, an attorney for the project. The INS headquarters was not notified of any difficulty in establishing a meeting.

The INS District Director, New York City, has advised INS Headquarters that the coordinated time frame for the opening of the facility was not immediately known to the District, but that as soon as the date was known, contact with the agencies was made. Although schedule coordination between the two parties proved difficult, a time frame was reached and a subsequent meeting took place to the satisfaction of the volunteer agencies.

Private-public relationships are important to this Service. We recently took action to establish Community Liaison positions in various cities throughout the country. As resources are available, the INS will continue to recruit and fill these valued positions. It should also be noted that various other kinds of INS personnel participate in liaison activities with charitable and relief organizations. In cases where asylum seekers are detained, careful scrutiny of each case takes place.

We believe that what occurred at Wackenhut facility was an anomaly. The Service strives to set up advance meetings with volunteer groups prior to the operation of new facilities for the express purpose of forging bonds with volunteer agencies and concerned community groups.

#### DRUG TRAFFICKING BY GANGS

*Question.* As you know, since the late 1980's drug trafficking gangs have transformed many of our cities and rural areas into combat zones. A few years ago you indicated that the Drug Enforcement Administration (DEA) was prepared to launch a new enforcement initiative, which you called Mobile Enforcement Teams. This initiative was designed to assist local law enforcement agencies to deal with the escalating problem of drug-related violence.

Answer. In 1995, DEA established the Mobile Enforcement Team (MET) program to combat the growth of violent drug trafficking organizations and prevent these organizations from taking over the streets of our communities. The growth of drug-related violence is straining the resources of our local police agencies. Intelligence reports, public opinion polls, and statistical trends have all verified the strong connection between narcotics trafficking and violent crime. The DEA MET initiative is designed to assist state and local police departments combat violent crime and drug trafficking at the local level.

At the request of a police chief, sheriff, or district attorney, a MET (composed of eight to twelve DEA Special Agents) will work in concert with local police to extricate violent drug offenders from a targeted community. The MET's primary mission is to assist the requesting local agency with the dismantling of drug organizations by securing the conviction and incarceration of those individuals dealing drugs and spurring violence in the affected community.

DEA has developed a deployment review system designed to assist in the evaluation of the MET program's overall effectiveness. All MET's are required to submit two reviews for each deployment. The first review occurs immediately following the

deployment, and the second review is conducted 6 months after the deployment is completed. Programmatic performance measurements include: impact of the reduction in drug sales and/or reduced visibility of drug sales; the stability of the target area, including any noticeable reduction in the violent crime activity; the community reaction and involvement; summary of media coverage; and an overall assessment prepared by the requesting agency including crime rates (e.g., drug related assaults, homicides, drive-by shootings, robberies, etc.). Thus far, these program deployment reviews have generally shown the MET program to have a positive impact on targeted communities, often revealing both significant decreases in area crime and narcotics trafficking.

The following are a few examples of successful MET program deployments:

*Spartanburg, South Carolina.*—The City of Spartanburg was experiencing a significant escalation of gang and drug-related violence, and the city's frequency of major crime was five times higher than the average for other cities with similar size populations. The MET and the Spartanburg Police Department identified the David Young crack cocaine organization as having the most significant influence on the violent crime and drug situation in the Spartanburg area. This September 1996 MET deployment ultimately resulted in a Federal indictment charging David and Darrell Young, and 50 members of the Young Trafficking Organization, with conspiracy for distributing 1,000 kilograms of cocaine. A current and former police officer were also arrested and charged in the investigation. Seizures included nine weapons, \$320,000, nine residences, one business, and eight vehicles.

*Lynn, Massachusetts.*—Lynn law enforcement officials requested assistance from the DEA MET program in helping them address the escalation in cocaine and methamphetamine trafficking in their city and the drug related violence that it produced. The MET targeted the local chapter of the Hells Angels Motorcycle Club, which controlled the neighborhood where their clubhouse was located, leaving residents in silent fear. The investigation involved a wiretap on the phone of Chapter President, Greg Domey, and undercover purchases from members and associates of the club. In November 1996, the deployment culminated with the arrest of Domey and 16 of his associates for drug trafficking and related acts of violence. Domey and one other member of the club were charged with operating a continuing criminal enterprise, which carries minimum/mandatory Federal sentences.

*Rampart Area—Los Angeles, California.*—Los Angeles Police Chief Willie Williams requested the help of the DEA MET program to assist his officers in regaining control of the Rampart District of Los Angeles, which was described as a "battle front" controlled by numerous street gangs. In April 1996, the MET joined forces with several other agencies and initiated enforcement targeting several violent street gangs. The deployment resulted in the incarceration of over 400 gang members, the seizure of numerous weapons and drugs, and an overwhelming response from the local residents. Neighbors in this area joined together to collect money from residents, and subsequently erected a street billboard thanking DEA and the other agencies for making their streets safe.

*Paterson, New Jersey.*—Chief of Police Vincent Amoresano of Paterson, New Jersey requested the help of the DEA MET program to assist in combating the area's violent gangs/organizations engaged in drug trafficking and street violence. The city is rife with illegal firearms, which are closely connected to illicit drug operations. According to city police, intimidation shootings—shooting to wound to scare away competition—are more and more common. Passaic County and Paterson authorities identified Yeidy Gonzalez-Inoa as the head of a violent Dominican organization trafficking in cocaine, crack cocaine, and weapons, in Paterson. This March 1996 deployment ultimately resulted in the arrest of Gonzalez and 37 others (4 charged with retaliatory homicide for the murder of a confidential source during the deployment; 33 charged with narcotics and weapon violations). In addition, this highly successful deployment resulted in the seizure of 4½ pounds of crack cocaine; 1 ounce of heroin; 1½ pounds of marijuana; 7 weapons; and \$4,300.

Statistical accomplishments of the MET program through February 1997 are as follows:

Total MET deployments .....	98
Initiated .....	98
Completed .....	70
Total arrests .....	3,411
Drug .....	3,117
Non-drug .....	294
Seizures:	
Cocaine (pounds) .....	780
Methamphetamine (pounds) .....	106

Heroin (pounds) .....	17
Marijuana (pounds) .....	353
Weapons .....	647
U.S. currency (millions) .....	\$4.2
Vehicles .....	110
Residences .....	11

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QUESTIONS SUBMITTED BY SENATOR BARBARA A. MIKULSKI

MAJOR DRUG INVESTIGATIONS

*Question.* The Immigration and Naturalization Service conducts criminal investigations including investigations into drug dealing by criminal gangs.

It is my understanding that the INS has suspended major drug investigations. In some cases, agents have been withdrawn in the middle of major drug investigations due to a change in INS policy.

Why have you stopped participating in major drug investigations and what are you doing to insure that existing investigations are not jeopardized?

*Answer.* The INS has not stopped participating in major drug investigations. The INS is not the primary agency responsible for investigating illicit drug trafficking organizations. The INS has 110 Organized Crime Drug Enforcement Task Force (OCDETF) special agents. These special agents are the only INS employees solely dedicated to the investigation of illicit drug trafficking organizations. Also, INS currently has 119 special agents assigned to Violent Gang Task Forces (VGTF). These VGTF's are proactive, interagency, multi-jurisdictional efforts involving other Federal law enforcement agencies as well as state and local entities. Many VGTF investigations have a nexus to drug trafficking organizations. The INS also participates in numerous local community task forces. It is the responsibility of local field managers to determine whether INS' participation in a particular task force is warranted. It is also incumbent upon local managers to assess the merits of ongoing investigations to determine whether INS' continued participation on specific task forces is justified. As a rule, INS special agents are not pulled off ongoing task force investigations where it would jeopardize the success of a case. If this has occurred, the specific case would have to be identified in order to provide an accurate response.

*Question.* What is the reason for this policy change?

*Answer.* There have been no recent national policy changes.

*Question.* Do you have any plans to put agents back on major criminal drug investigations?

*Answer.* Currently, the INS has 110 special agents assigned to OCDETF's. These 110 positions represent 12 more positions than shown on the OCDETF reimbursable account. In fiscal year 1996, INS obligated \$10.3 million in the OCDETF program. Only \$10.1 million was reimbursed by the Office of National Drug Control Policy. The remaining obligations were absorbed by INS funds. The local INS field offices have reported that their OCDETF special agents are involved in OCDETF work and investigations 100 percent of the time. We are fully committed to the success of the OCDETF program.

SUBCOMMITTEE RECESS

Senator HOLLINGS. Let the record show that we have just certified that the Government of Mexico is not corrupt.

Senator GREGG. Yes, I know.

Senator HOLLINGS. You cannot go out on the range, you might get shot, so you might not walk over here because you might become a witness or get shot. But Mexico ought to be certified. They are doing a wonderful job.

Senator GREGG. Thank you.

[Whereupon, at 10:51 a.m., Thursday, April 10, the subcommittee was recessed, to reconvene subject to the call of the Chair.]

**DEPARTMENTS OF COMMERCE, JUSTICE, AND  
STATE, THE JUDICIARY, AND RELATED  
AGENCIES APPROPRIATIONS FOR FISCAL  
YEAR 1998**

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**WEDNESDAY, APRIL 16, 1997**

U.S. SENATE,  
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,  
*Washington, DC.*

The subcommittee met at 10 a.m., in room S-146, the Capitol,  
Hon. Judd Gregg (chairman) presiding.

Present: Senators Gregg, Campbell, Domenici, and Hollings.

Also present: Senator Burns.

**FEDERAL COMMUNICATIONS COMMISSION**

**STATEMENT OF HON. REED E. HUNDT, CHAIRMAN**

**ACCOMPANIED BY ANDREW S. FISHEL, MANAGING DIRECTOR**

**OPENING REMARKS**

Senator GREGG. We will begin the hearing here on the Federal Communications Commission [FCC] appropriation.

Senator Hollings, how are you today?

Senator HOLLINGS. Good morning, Judd. You all right?

Senator GREGG. I am great, great.

Senator HOLLINGS. Good.

Senator GREGG. We have somebody with some knowledge base on this subject here. We can actually begin. I have no opening statement. Did you have an opening statement?

Senator HOLLINGS. No; thank you.

Senator GREGG. We would be happy to hear from you, Mr. Hundt.

**OPENING STATEMENT OF MR. HUNDT**

Mr. HUNDT. Thank you very much.

Let me introduce Andy Fishel, our Managing Director, who is sitting to my right.

Thank you very much for having this hearing. As I am sure you know, at this particular time in history, the Federal Communications Commission is wrestling with some of the most difficult problems that the agency has ever had to address, and they certainly are time-consuming, and voluminous problems.

In the last year, pursuant to the Telecom Act, and the normal crush of business, we have initiated 265 separate rulemakings, and

have reviewed one-quarter of 1 million pages of comments filed by 72,000 parties. At the same time, we have completed 14 auctions; we began our 15th yesterday. Our daily workload over the course of the last year has led to us granting 425,000 separate applications, resolving more than 80,000 separate complaints. And our overtime electricity bill has tripled in the past year. And the work is just beginning.

We anticipate filings under section 271 of the new law for Bell companies to get into long distance. Ameritech's filings, this year, so far, in Michigan alone, have been supplemented by 17,000 pages of documents.

We have also been dealing with some very daunting economic and intellectual problems, not just voluminous but just plain hard. Let me give you two examples and then bring my statement to a close, so that we can proceed as you would wish.

An example. Congress asked us to take implicit universal subsidies and make them explicit, and establish a universal service system that expressly contemplates that there could be multiple universal service providers that receive that subsidy.

Consequently, we have been working very hard in recent months to figure out how to implement this mandate in a way that preserves and addresses universal service for small telephone companies, and particularly for small telephone companies in rural America. In many parts of America, particularly those that are rural, it is not the six large Bell companies and GTE that are the service providers, but it is, in total, 1,400 small telephone companies and rural cooperatives.

We understand, clearly, that Congress has asked us in no way to have these companies be victims, or sufferers from the policy of competition. Instead, we need to reconcile the policy of competition with the country's historic commitment to preserving, maintaining, and supporting universal service in this country. The first step, pursuant to the congressional mandate, was to work with the joint board of State and Federal commissioners to write a report. This was done in November.

Here is where I think we are now. I speak not for the whole Commission, which will vote on this matter on May 6, but just to give you some insight, Mr. Chairman, on this particular matter, as an example of the kind of work that we've been pleased to do, but have been somewhat burdened by.

Rural telephone companies, the backbone of universal service to rural America should, I think, continue to receive all the universal service assistance that they are receiving today, and that they would be receiving if we did not need to reform the methods. The methods today, known by acronyms like LTS and DEM weighting, and high cost fund, do need to be reformed pursuant to the mandate of Congress. They need to be made explicit. But the reform should not be one, in my view, that shortchanges these telephone companies in any way.

The joint board thought that it might be a good idea to freeze high cost support based on 1995 investment. My own personal conclusion is that in this respect, we should not follow the joint board's recommendation and we should continue to distribute high cost support according to existing formulas, which will allow support to

rise in 1998 and 1999, based on investments made in 1996 and 1997. For the year 2000, it is my view that we should adopt a proposal made by smaller telephone company associations to adjust the level of support by inflation.

Another instance of some of the work we have been doing—the joint board report was read, by some, to suggest that we should eliminate all support for second residential lines and multiline businesses. Members of this committee, including the distinguished ranking Democratic member, have suggested to us that this is not an aspect of the joint board report that we should adopt, and we agree—at least I agree with that view. Rural telephone companies, in my view, should continue to receive support for all lines through at least January 1, 2001.

And a last example of a problem that we are struggling with, and I think we are coming up with the right and happy solution—how do we fulfill Congress' mandate to connect every classroom and library and rural health care clinic in the country to our Nation's telephone networks, without, in any way, causing any threat, direct or indirect, to the price of basic residential dialtone service?

I believe that the recommended decision is circulating now, or virtually now—I have not checked my clock—but essentially today, among the commissioners of the FCC, will accomplish this goal, it will not be necessary in any way, to directly or indirectly threaten, prejudice, or increase basic residential dialtone in order to accomplish the goals of connecting rural health care clinics providing service to low-income people, or connecting classrooms and libraries.

#### PREPARED STATEMENT

As to the specific techniques that we suggest instead, they bear substantial resemblance to today's techniques where purchasers of interstate tariffs, particularly businesses, do, in fact, carry the bulk of the load of maintaining the communications networks of America. I could describe it in more detail, if you wish, and possibly you would like me to bring this to a conclusion now.

Thank you for your indulgence.

[The statement follows:]

#### PREPARED STATEMENT OF REED E. HUNDT

##### INTRODUCTION

Mr. Chairman and Members of the Subcommittee, thank you for this opportunity to testify on the Federal Communications Commission's fiscal year 1998 Budget Estimates. The Telecommunications Act of 1996 updates the FCC's charter first granted in the Communications Act of 1934. Congress sought to establish a pro-competitive, deregulatory national policy framework for communications. This framework reflects a bipartisan consensus that introducing competition and deregulation in America's telecommunications marketplace offers numerous potential benefits for consumers, business users, communications companies, and the economy as a whole.

If our competition policy is a success, then the market, not government, will declare industries or firms winners or losers. And, as The New York Times editorial page observed last month, if competition succeeds, customers used to squabbling with their local telecommunications service provider over installation, service repairs, or rates can do more than fight. They can switch. Accordingly, implementation of the Telecommunications Act remains the FCC's day-to-day agenda.

We also remain committed to the goal of public benefits from communications. Market forces alone will not always adequately meet all of society's public interest

goals, such as addressing public safety needs. Consumer education and outreach is also an integral part of our mandate.

Finally, we are working to make the FCC's operations as smart, simple, and streamlined as possible. The payoff is that our productivity is up. Even as we project the return of FCC staffing to pre-Telecommunications Act levels, our workload continues to grow.

#### TELECOMMUNICATIONS ACT IMPLEMENTATION

We have been able to meet or beat every deadline the Telecommunications Act sets for us, while continuing to carry out all of our other responsibilities. So far, we have completed 44 implementation-related rulemakings and adopted 146 individual items. We have also held 18 public forums on issues related to Telecommunications Act implementation, including interconnection, access charge reform and universal service, national wireless facilities siting policies, and market entry barriers for small businesses. We are in the process of completing 23 proceedings, and the Telecommunications Act requires us to initiate at least 12 additional proceedings.

As we continue to implement the Act, we are discovering a number of things we did not realize previously. One is that the process of introducing the competition envisioned by the Act is increasing our workload in ways that are difficult to predict and to plan. We have been inundated with filings in the various proceedings before us. For example, we have reviewed 75,000 pages of comments and other filings by parties in the universal service proceeding alone. On access reform we received a four-and-a-half foot stack of comments that does not include over 300,000 e-mail comments concerning charges that Internet Service Providers and similar companies pay to local telephone companies. In both proceedings, we have spent hundreds of person hours in meetings with interested parties. We have also spent almost \$450,000 in overtime electric bills during the past year, more than triple what we spent the year before, just to keep our buildings open to support the longer staff hours.

With respect to Bell Operating Company (BOC) entry into the long distance market, we now know that the 49 anticipated filings by BOC's under §271 of the Act may not be as neat as the process suggests. Earlier this year, for example, Ameritech filed twice before withdrawing its application, which resulted in over 17,000 pages of filings. Last Friday, SBC Communications filed the third in-region long distance entry petition, which consists of 5,000 pages of filings. In fact, for fiscal year 1997 we project filings received in all docketed proceedings will increase 88 percent over fiscal year 1996. Additionally, while Telecommunications Act implementation has required us to increase Full Time Equivalents (FTE's) devoted to policy and rulemaking activities by 50 percent since fiscal year 1995, filings received for review in docketed proceedings have increased by 227 percent during the same period. We are required to, and do, give consideration to every one of the filings and comments received by the agency.

The Telecommunications Act impacts our workload in other ways as well. Veronis, Suhler & Associates reported two weeks ago that mass media mergers and acquisitions totaled \$113 billion in 1996. How many new broadcast license transfers will be filed with the Commission as the industry continues to benefit from the new structural freedom the Act affords? How many complaints will be filed concerning over-the-air-reception devices? How many preemption cases will the FCC be called upon to address pursuant to §253 of the Act? Five of the ten largest U.S. business mergers in 1996 were between telecommunications companies, and each one required FCC review. With the digitization of communications, the entire computer industry has become part of the communications sector of our economy, and has a number of issues before the FCC. Moreover, each action we take has advocates and opponents. Many decisions will be challenged in court. The subsequent workload from implementing the Telecommunications Act's changes is very large. Being prepared to handle this growing workload, like implementation of the Act itself, requires that we have sufficient resources.

#### OVERVIEW OF FISCAL YEAR 1998 BUDGET REQUEST

The FCC proposes an fiscal year 1998 budget of \$217,000,000 with 2,155 FTE's. This represents an increase of \$30 million over an adjusted fiscal year 1997 appropriation level, as described below. The proposed increase is for one purpose only: to reimburse the General Services Administration (GSA) for one-time, non-recurring costs to relocate FCC headquarters to a consolidated working space at the Portals project in Southwest Washington. The reimbursable costs are attributable to expenses for information systems at the Portals, as well as design requirements and systems furniture that have to be paid for in fiscal year 1997 in order for the items

to be available by the time the move begins early in fiscal year 1998. It is anticipated that \$10 million in additional funding will be required in fiscal year 1999 to repay GSA for the remaining costs associated with the relocation. We are advised the roof will be in place at the Portals building later this Spring. The building itself incorporates design elements necessary to accommodate the specific requirements of the FCC. The schedule calls for the FCC to move in six equal phases beginning approximately December 1997 and ending June 1998.

With the exception of the increased funding for headquarters relocation, the FCC's fiscal year 1998 appropriations request is \$187 million. Please note that this is \$2.1 million less than our total fiscal year 1997 appropriation of \$189,079,000. It is also \$2.1 million less than the base appropriation included in the President's budget. This reduction reflects a change in the estimated cost of salary increases.

We are requesting no additional funding to cover \$7.3 million in anticipated uncontrollable costs, primarily to cover the cost of fiscal year 1997 and fiscal year 1998 locality and pay raises. Also included are inflationary costs for various non-compensation accounts including rent, mail, and service contracts. We have assumed that these costs will be funded from the savings generated by the reduction of 100 FTE's through 1998. These staff reductions will be accomplished through attrition and a decrease in the number of employees initially hired on term appointments, as those appointments expire in fiscal year 1998. Our proposal to operate at a current service baseline for fiscal year 1998 of \$187 million is less than last year's appropriation. The amount to be collected from regulatory fees would increase from \$152,523,000 in fiscal year 1997 to \$162,523,000 in fiscal year 1998.

As you know, in fiscal year 1996 Congress appropriated \$10 million to the FCC for Telecommunications Act implementation. The FCC obligated \$7.2 million of this amount prior to September 30, 1996. The balance of \$2.8 million has been carried forward into fiscal year 1997 to complete Telecommunications Act initiatives begun in fiscal year 1996. Almost all of the \$2.8 million is either obligated or committed in the agency's accounting system for the completion of implementation-related initiatives, such as the continuation of required paralegal and data support services, and economic analysis of telecommunications issues. The FCC has also carried forward into fiscal year 1997 \$2.4 million of spectrum auction receipts that are obligated for necessary auctions-related expenses in the current fiscal year. Finally, we carried forward into fiscal year 1997 \$3 million in regulatory fees collected in excess of the appropriation requirements for fiscal year 1995 (\$2.9 million) and fiscal year 1996 (\$100,000). Our plan is to redirect these funds to programmatic activities, such as electronic licensing, which is a significant part of our ongoing efforts to streamline the Commission's processes.

#### PUBLIC SAFETY SPECTRUM

In addition to promoting competition, the second fundamental task of the FCC is to secure the public interest in communications. One of the public's most urgent needs is for more public safety spectrum. The Commission took a giant step toward addressing this need two weeks ago when it adopted the Digital Television (DTV) Table of Allotments, which recovers immediately 60 MHz of spectrum previously used for TV channels 60-69. I hope that 24 MHz of this newly recovered spectrum (out of a total of 138 MHz to be recovered over the next ten years) can be reallocated quickly to help address the serious spectrum needs of public safety agencies. As I noted when we adopted the DTV Table, the benefits of this reallocation can be measured, literally, in lives saved. Affording the public safety community new spectrum with nationwide capacity will also facilitate development of network interoperability and will create new efficiencies in equipment manufacturing that can be passed on to public safety users.

Additional spectrum, however, is only one step in improving public safety wireless communications. The Public Safety Wireless Advisory Committee (PSWAC) identified other areas in which improvements are needed. For example, the public safety community has long been beset by the problems of operating in many different frequency bands—meaning that police, fire, and emergency agencies in one town often cannot talk to each other because they operate on different frequencies. Past FCC policies contributed to the problems we see today. The Commission allocated spectrum on a piecemeal basis—leading to the fragmentation that characterizes public safety communications. A significant portion of our ongoing public safety proceeding will be devoted to addressing interoperability problems.

We are also working on ways to improve the features and delivery of emergency communications, for example, examining the various ways that we can increase the accuracy and reliability of wireless 911 and enhanced 911 services. To alleviate congestion on 911 circuits, the FCC earlier this year announced the availability of a

new 311 code as a means of quick access to non-emergency police and other government services. We also made available 711 for quick access to Telecommunications Relay Services, a service that allows for persons with hearing or speech disabilities to use the telephone.

#### CONSUMER EDUCATION AND OUTREACH

Consumer education and outreach is an integral part of our mandate, and we continue to receive an increasing number of consumer inquiries, many of them forwarded to us by you on behalf of your constituents. In 1996, our Office of Legislative and Intergovernmental Affairs handled more than 7,000 Congressional inquiries, an increase of 25 percent over 1995. During the first ten days of this month alone, we received 524 Congressional letters, an increase of 160 percent over the same period last year.

Last year, our Office of Public Affairs answered more than 105,000 inquiries from consumers and the media and issued over 6,000 documents. During February and March, the FCC's home page received an average of 135,643 hits per day, up from an average of 37,647 hits per day during the same period in 1996. In fiscal year 1996, the FCC responded to over 65,000 requests for reference materials as compared to 62,600 in fiscal year 1995. To move the agency further onto the Internet, two weeks ago we issued a Notice of Proposed Rulemaking to allow electronic comments to be filed in FCC rulemaking proceedings, using the World Wide Web and electronic mail. Electronic filing of comments in FCC rulemaking proceedings will make it easier for the estimated 40 million people in the United States who have access to the Internet to file comments and to access comments filed by others in an efficient manner.

Thanks to Congress' wisdom in providing us with resources for upgraded computers and modern information technology, we are able to keep pace with unprecedented public interest in matters before the FCC. Consistent with our increased productivity and following the closure of 18 FCC field offices in fiscal year 1996, our fiscal year 1998 budget estimates project 14 percent fewer FTE's for public information services than were devoted to the same activity in fiscal year 1995.

Industry and the public also continue to file complaints with us, giving rise to increased levels of enforcement activity. Our Common Carrier Bureau, for example, processed 28,381 written consumer complaints and inquiries in fiscal year 1996, 63 percent more than in fiscal year 1995. The majority of these complaints were received directly from consumers, accompanied by bills and other supporting documentation. A majority of them concerned "slamming" (i.e., unauthorized switching of long distance carriers) and operator service providers. While the types of complaints change over time, the total number of complaints received by the Bureau continues to rise. Similarly, our Wireless Telecommunications Bureau handled 1,239 enforcement matters in fiscal year 1996, 71 percent more than in fiscal year 1995. At the same time, the number of FTE's devoted to enforcement activity agency-wide is down 19 percent since fiscal year 1995.

#### IMPROVING FCC OPERATIONS

Deregulation means that we need to be sure that both incumbents and newcomers are able to innovate without being discouraged by our rules or processes. Later this year, we hope to commence a Notice of Inquiry into the impact of our rules on innovation and investment in telecommunications networks, including incentives to deploy advanced technologies for data networks such as the Internet.

We also continue to ask whether the FCC is doing things it should not be doing. It was this question that led us to cut the number of FCC field offices from 34 to 16 (including the first reduction-in-force in FCC history). To better serve the needs of the public, we created a new, centralized call center at 1-888-CALL-FCC to provide toll free service for information or assistance from anywhere in the United States.

In 1995, we made 37 streamlining recommendations to Congress concerning functions we no longer believed it was necessary for us to perform, 21 of which were enacted as part of the Telecommunications Act. Just one such change, removing an individual licensing requirement for domestically-operated recreational ships and aircraft, eliminated the need to track about 710,000 radio licenses.

It was also this question about what we should not be doing that led us to issue a Notice of Inquiry immediately after the Telecommunications Act became law asking how we could improve our processes. In gathering suggestions responding to the NOI, we worked with the Federal Communications Bar Association. The NOI served as an umbrella proceeding under which the public could comment on FCC-wide and Bureau-specific streamlining efforts. In reply to the NOI, the FCC received numer-

ous proposals ranging from major policy initiatives to suggestions for minor adjustments in the way we do business. Many proposals have been adopted. Last month, for example, we simplified and clarified our rules governing ex parte presentations in proceedings before the Commission. The amended rules will make compliance easier, while enhancing their effectiveness.

We also last month adopted a Notice of Proposed Rulemaking proposing to simplify the existing equipment authorization process, to deregulate equipment authorization requirements for certain types of equipment, and to provide for electronic filing of applications for equipment authorization. Simplifying and streamlining the equipment authorization process will benefit both large and small manufacturers, encourage the development of innovative products for consumers, and enable new products to be introduced into the market more rapidly. The proposals, if adopted, would reduce the number of equipment applications required to be filed with the Commission annually from about 3,500 to approximately 1,800, significantly reducing paperwork burdens on manufacturers.

Two weeks ago, we eliminated the limit on directional gain antennas for spread spectrum transmitters operating in the 2,450 MHz and the 5,800 MHz bands and made a number of related rules changes intended to promote the use and development of spread spectrum systems. The new rules will expand the ability of equipment manufacturers to develop radio links without the delays and costs associated with formal frequency coordination and licensing. The new rules will also facilitate the growth of the spread spectrum industry by enabling and encouraging practical applications for spread spectrum transmission system products, which may include intelligent transportation system communications links; high speed Internet connections for schools, hospitals, and government offices; energy utility applications; PCS and cellular backbone connections; and T-1 common carrier links in rural areas.

Additional FCC streamlining actions already completed include reducing reporting requirements by more than 50 percent for the National Exchange Carriers Association, among others; eliminating our Review Board; reducing international tariff notice periods to one day from two weeks; reducing the size of the Office of Managing Director as a percentage of the agency from 16 percent to 9 percent; and providing status information on audio service applications on the FCC's web site ([www.fcc.gov](http://www.fcc.gov)), thereby affording immediate and direct access to that information to licensees and applicants.

#### ELECTRONIC LICENSING

Just as computers have improved our ability to respond to public requests for information, we also want to use information technology to promote electronic licensing. Electronic licensing reduces processing time by at least 25 percent, and in many instances reduces processing time from 30 days to overnight. The FCC's Wireless Telecommunications Bureau has been a leader in using electronic licensing to speed its work.

The Wireless Bureau has developed the capability to receive over 60 percent of its more than 500,000 annual applications electronically. To date, more than 150,000 license applications have been filed electronically. Additionally, the Wireless Bureau has developed software that will analyze and automatically determine licensing accuracy of thousands of applications annually. This electronic licensing combined with electronic filing has reduced processing time for some customers, such as Amateur Radio operators, from more than 75 days to overnight.

Other FCC Bureaus are moving to electronic filing as well. The International Bureau has instituted electronic filing for earth station applications. The Mass Media Bureau has begun a project to provide for the electronic filing of broadcast applications. The filing software will scan for incomplete or inaccurate applications, and provide automatic computer analysis of much of the information currently processed by hand, such as interference analysis. As I described above, electronic filing of applications for equipment authorization should reduce by more than half the current application processing time of approximately 40 days.

We also hope to begin electronic payment of filing fees by credit card, so as to create an added incentive for applicants to use the electronic method of filing. We are also working on implementing a universal form on the Internet for all electronic filing and renewals. Thanks to efficiencies created by electronic licensing as well as streamlining proposals such as delicensing, we project that FTE's devoted to authorization of service will decrease in fiscal year 1998 by 11 percent over fiscal year 1996 levels.

## SHIFTING MANAGEMENT RESPONSIBILITY FOR FCC AUCTION DEBT

In the area of what the FCC should not be doing, it is also time to assess whether it is consistent with our statutory mandate under the 1993 Budget Act to act as both the promoter of wireless competition and as banker to the wireless industry. Pursuant to the direction of Congress, as expressed in the 1993 Budget Act, the FCC adopted rules allowing small businesses to pay for their new spectrum licenses in installments over the term of their licenses. While these policies have helped hundreds of small businesses obtain spectrum licenses in our auctions, these new businesses now owe the Federal government substantial sums for their licenses.

It is becoming increasingly apparent that there is tension created by the FCC's present dual role as regulator of, and creditor to, the wireless industry. The Commission will continue to face requests from some small business licensees for temporary relief from their installment payment obligations, or for renegotiation of the terms of their loans. Commercial lending institutions routinely engage in these practices, but the FCC does not have the necessary expertise or experience to perform these functions. In addition, such a function may also conflict with our statutory duty to expeditiously issue licenses for new communications services.

The responsibility for all of these creditor functions should be transferred to some other government entity with appropriate expertise, such as the Treasury Department, while the Commission would retain its ultimate authority over the licenses themselves. Treasury could work out any relief that should be granted to an auction debtor, and make appropriate recommendations to the Commission with respect to whether licenses should be retained, revoked, or transferred. The Treasury Department's assumption of these creditor responsibilities would be consistent with the fact that the auction funds are deposited in the U.S. Treasury, and the Department would be in the best position to make decisions on payment terms.

## CONCLUSION

While competition and deregulation remain the FCC's mantra, the agency will continue to need the resources to do the job Congress, the telecommunications industry, and the American people are calling upon us to do. The New York Times editorial page last week characterized the Commission's deregulatory efforts to date as "sure-footed." Adherence to our twin goals of private competition in communications and public benefits from communications should continue to promote significant investment in all telecommunications industries, and hasten the day when business and residential users will be afforded a marketplace choice in telecommunications services. It also means that all Americans can look forward to the benefits of modern communications.

This concludes my statement. Thank you again for this opportunity to meet with you. I would be pleased to answer your questions.

## FUNDING FOR UNIVERSAL SERVICE

Senator GREGG. Thank you.

I would turn to the ranking member whose expertise in this area far exceeds mine.

Senator HOLLINGS. I defer on the expertise part, but I think the chairman has answered the questions that many of us had with respect to the Commerce Committee. Namely, the joint board recommendation about connecting up, now, all the schools and libraries. You say that that is not going to threaten any basic rural phone service.

Well, it is a \$3 billion amount. You only get, what is it, \$1.6 billion, now, or what is the universal service fund? So I mean, you are going to double it. You are not going to do it all at once. You know, like that ad, "I can't believe I ate the whole thing"? In other words, you cannot distribute the \$3 billion in 1 year to every library and every school—I doubt—or can you? That is the question.

Mr. HUNDT. Well, I do not know how many will come to take the money. That certainly is true. But the joint board suggested that we make available for connecting classrooms and libraries, not more but not less than \$2.25 billion on a per-year basis. And under

the proposal that is circulating now, Senator, that recommendation would be followed. As to how much would actually be requested and how many schools or libraries would meet the requirements, that I cannot predict.

Senator HOLLINGS. Well, I hope your Commission will show care in distributing it. I mean, obviously, everybody is going to apply.

Mr. HUNDT. I am not sure that everyone——

Senator HOLLINGS. Congressmen and Senators apply for their libraries.

Mr. HUNDT. Well, I am not sure that everyone will be able to meet the requirements immediately, but I do not doubt that in the fullness of time everybody will——

Senator HOLLINGS. Well, in the fullness of time, but I was trying to think of an orderly phase-in. With respect to the secondary line and the multiline users, that joint board recommendation to up the rates there in order to try to enhance the universal service fund, I understand you to say you are not going to follow that recommendation. I hope we do not.

Mr. HUNDT. I think that that recommendation—there was a good thought behind it, but I think that as we studied it more, and as we took more in the record, we realized that there are instances in which a second-line service that did not get support in some of the States, the United States, would really be priced prohibitively high, and that would hurt business development, even Internet access in these States. So we are changing our techniques here, but your concerns, in particular, Senator Hollings, I hope and sincerely believe are met in a way that you would be pleased with, by the proposal that is circulating.

For example, we have a totally new method, but, you know, just to illustrate the point, a company called Consolidated, in North Dakota, right now is receiving total support of \$1.211 million. A totally new method. Their support under the new method would be \$1.211 million.

#### SUBSCRIBER LINE CHARGES

Senator HOLLINGS. I see. Well, again, about trying to enhance that universal service, and the problem of access reform, as I remember before the Commerce Committee, you said the Commission would be taking no action to increase local phone bills, and there has been some misgiving about any flat or user fee increases in the subscriber line charges, and all.

That is not contemplated at this time, is it?

Mr. HUNDT. No, sir; at least not by me. And again, I am sure you all know that I am speaking for myself here, since the Commission will vote on this May 6.

Senator HOLLINGS. Right.

Mr. HUNDT. But I personally think that it is inconsistent with the congressional intent. You want us, as I understand it—and you have said this more than a few times on the record—you, Senator, and many other Senators. You want to make sure the basic dialtone service, which is the access product, the gateway product in buying anything else, is affordable. We know it is affordable now, because it is at about 95 percent penetration. We do not want that to go up in price. So if you have a universal service program

that makes that go up in the name of universal service, you have kind of done the wrong thing in saying you have done the right thing.

We are trying to keep basic, affordable dialtone at the levels that exist today. That is why raising the subscriber line charge, in my view, cannot be consistent with the directions that you gave us.

#### CABLE RATES

Senator HOLLINGS. Now the real concern among consumer groups, and this Senator, is with respect to the increase in cable rates. Now we know that we had tried, and we did keep control against any increases in the 1996 act until 1999. However, under the 1992 act allowing increases for inflation, it seems to many to have been abused in the sense that there have been three to four times the inflation rate.

What is your response to that?

Mr. HUNDT. Well, we have looked into this in some detail. As far as we can tell, Senator, the main two things driving increases in cable rates as of this moment, are, No. 1, the programming costs, the costs that are paid by the cable companies. Those are going up.

And the cable company does not have much choice when its program supplier says, "I am raising my prices." The cable company, we can understand—the cable company has to raise that price in the same way that, when Starbucks had a higher price for coffee beans, they ended up passing that on to a higher price for a cup of coffee.

And No. 2 is that some cable companies are spending a lot of money to upgrade their systems in a way that will make them be more competitive and more efficiently able to provide telephony service, which, of course, Congress opened the door for in the 1996 act. Those upgrades are being passed on. That is, however, not true for most companies. The first point applies to virtually every cable company.

Senator HOLLINGS. Well, look at that carefully because there is some evidence to the effect that more than the program increase costs that is—and actually triple the rate of inflation cost, and I know the study is being made.

#### FCC RELOCATION COST

Do you have \$30 million in here, I think, to move to your new headquarters?

Mr. HUNDT. I think it might be \$40 million, actually.

Senator HOLLINGS. Forty.

Mr. HUNDT. Forty million dollars over 2 years, and \$30 million in the year in question.

#### PERSONNEL REDUCTION

Senator HOLLINGS. Yes; I understand. And actually, you have cut back the personnel some 100?

Mr. HUNDT. Yes; we're going to be working with fewer people in order to accommodate the increases that otherwise always happen. The CPI increases the salary, and the other increases that you can-

not do anything about. So to have a flat level in the appropriation, we have contemplated a smaller number of people.

Senator HOLLINGS. Thank you, Mr. Chairman.

Senator GREGG. Thank you, Senator.

Senator Campbell.

Senator CAMPBELL. Thanks, Mr. Chairman.

I just had one little question. I do not know how Starbucks got in this conversation, but I fly United all the time. This is just related. I think they have done more damage to United Airlines flight service—Starbucks—than I think if the wheels fell off that airplane. [Laughter.]

#### RADIO CHANNEL LICENSES

I wonder, I will just one little—it is kind of a parochial question, but I live in an area where there are nine separate law enforcement agencies, and I am not sure I understand this correctly, but to use different radio channels, they have to obtain permits to use different radio channels. Is that correct?

Mr. HUNDT. Yes.

Senator CAMPBELL. Through the FCC?

Mr. HUNDT. Yes; I mean, all of the licenses to use those radio channels come from us.

Senator CAMPBELL. With nine agencies—and where we live, there seems to be an awful lot of frequency congestion because they do not have enough channels. Is there anything that prevents local government from expanding them? Does local government have to get the permits from you, or State government also have to get—

Mr. HUNDT. Yes; this comes out of the FCC, because we have a national licensing scheme for radio use.

Senator CAMPBELL. Is that a difficult thing to do in situations—

Mr. HUNDT. It is very difficult to do, but I have some good news, which you might want to let me share with you on this particular topic.

Senator CAMPBELL. Please.

Mr. HUNDT. As I am sure you know, not very long ago, we issued the digital television licenses, and that is a pretty big deal for broadcasters, and I think we have done a good thing for the country. But a small part of our decision is a very big deal for the public safety community. Because in the course of that decision, we found some spectrum in what we call the 60's, the channels on the TV set that are in the 60's, that are not used in most places in the United States; 63, 64. There is no TV station that operates in those kinds of channels, almost everywhere in the United States.

So because we have now carved that out as not being part of the digital TV transition, we can commence a rulemaking process at the FCC in the next few months, that would allocate a chunk of that spectrum for coordinated, comprehensive use by the public safety community all across the country.

Senator CAMPBELL. I see.

Mr. HUNDT. Just yesterday, and this does not happen every day, the public safety community came in and thanked all the commissioners of the FCC. And like I said, that does not happen every day. They should not thank us. They should thank our engineers

who worked for, really, 2½ years, and built a fantastic computer model that solved this problem for the whole country.

And I think when we get that model out and we get this rule-making out in the next couple of months, you will be really, really proud of these engineers.

Senator CAMPBELL. Do you think that will make it easier to get an expanded number of channels?

Mr. HUNDT. It is really going to make a big difference.

Senator CAMPBELL. That is great. That is the only question I had, Mr. Chairman.

#### SPECTRUM COST FOR PUBLIC SAFETY ENTITIES

Senator HOLLINGS. What is the cost to the public safety entities, now, in order to take on that spectrum?

Mr. HUNDT. Well, you know, that is a good question. The primary costs that they face, right now—and I do not know how to quantify it—but when a police department and a fire department in a single town both have to go and get radio licenses and radio equipment that they want to use, they find that it is hard to find enough spectrum to use, enough capacity, and they end up not coordinating. They end up getting different licenses, and they end up not being able to talk to each other. So the prices go through the roof, not to mention the fact that they cannot do as good a job as they would like to do.

So that we had this instance at the World Trade Center bombing, where we found that one law enforcement agency on one floor could not communicate to another one one floor away. We are talking about lives being lost, you know, not just extra expense.

So if we carved out a 63, or a 64, one of those TV channels that is not used, it is the same frequency all across the country, and we could at last get the long-desired coordination possibility.

So I have never quantified the savings here, and we should do that, Senator, but it is big. It is big.

#### TECHNOLOGY TO USE SPECTRUM

Senator GREGG. Do we not also have an issue on the capacity of these law enforcement agencies to have the technology to undertake the use of this spectrum?

Mr. HUNDT. Yes.

Senator GREGG. Now the FBI thinks, estimating, it will cost \$1 billion for them just to get up to speed on the spectrum cost.

#### SPECTRUM AUCTIONS

Mr. HUNDT. Yes; in this connection, another thing that we have underway right now is an effort with the public safety community in which we might take some of these 60's that I was mentioning, and auction them, and then divert some of the money to help let the public safety community have a way to pay for using the other 60's, and in that way try to kill two birds with one stone.

Senator GREGG. Would you have to limit that just to 60's? I mean, as you auction off other spectrums, should not some of it be set aside to pick up the cost that these—

Mr. HUNDT. You could target any of the spectrum auctions for this purpose.

Senator GREGG. You would not have any problem with that?

Mr. HUNDT. I certainly would not. It just happens to be a neat solution, that we could take this batch of the 60's, as we are calling them, and then have an auction for some and raise the cash, and then for the others, you know, dedicate them directly to the public safety community, and then, really, one solution to address this issue that has plagued the country for an awful long time without a good solution.

Senator GREGG. I think we should do that, follow along with those courses.

Senator Burns has joined us. We are honored, of course.

#### CONVERSION TO DIGITAL TELEVISION

Senator BURNS. Well, I do not have any questions. A followup to the channels. Those channels were initially assigned to the television industry, were they not?

Mr. HUNDT. That is right.

Senator BURNS. How does that fit, when you convert some of those channels, how does that fit with your conversion to digital?

Mr. HUNDT. Well, two things. First of all, where the 60's are currently being used for analog TV, we would still have that happen. For example, Congressman Markey always delights to remind me that one of the 60's is used in Boston for the Boston Red Sox being broadcast. We would not be taking that channel away.

Senator BURNS. I am not a Red Sox fan.

Senator HOLLINGS. We do not mind.

Mr. HUNDT. You all do not mind about that? [Laughter.]

Well, in any event—

Senator GREGG. Hold it. Hold it. Hold it. [Laughter.]

Mr. HUNDT. Well, you know, as you please, really. I would take your direction on this.

But in any event, we would grandfather the existing analog licensees of the 60's. It is just that there are not very many in the aggregate across the country. The key thing that our engineers figured out was a way to give out the digital television licenses without using any of the 60's, and that is a brilliant engineering solution that is all expressed in the computer model.

Senator BURNS. Where will they go now?

Mr. HUNDT. Different answers for different stations, but basically between 2 and—I can't remember, right now.

Senator BURNS. It will be under 50, you mean?

Mr. HUNDT. Yes, sir; for example, in Washington, 8 would be used, because no one uses 8 in Washington. Or 14 would be used, because no one uses 14 today. I am not competent to explain the intricacies, but because, as you well know, the allocation system involves a interaction among 2,000 separate licenses. It is very complicated to make them all fit, and the model, computer model that our engineers have developed does this job and is in the process of being publicly disclosed to the industry, even now.

Senator GREGG. Well, I think this is a very important issue. This committee has been aggressively pressing the Justice Department, and I think we have even written you a few letters on this issue

of taking the spectrum for the law enforcement community and for the Defense Department as we go through the auction process. So, hopefully, this will alleviate some of the concern that we have had.

I also think we need to pursue how we pay for a \$1 billion price tag that the FBI faces, and to say nothing of what local law enforcement faces in technology upgrading. The ideas you have on that are very helpful, and we appreciate them.

#### PORTALS LEASE

On the issue of your move to Portals, I understand that this arises out of your desire to go there, but also because the General Services Administration [GSA] lost a lawsuit over the leasing of this facility, and the new lease price seems to be rather high. I think it is \$35 a foot. I am just wondering why you should have to pay this and why GSA should not pay the difference?

Mr. HUNDT. GSA, as a matter of law, was the agent of the FCC for purposes of the lease negotiation. That was not something that we have any role in, and as our agency, they bound us to the lease which they did sign.

Senator GREGG. So why shouldn't we let them pay for it? It comes out of another committee. It is out of another account.

Mr. HUNDT. I really have no comment for you. We do not have an appropriated sum to pay for our move at this time, and we have told GSA that we do not have the money to pay for the move, and GSA will have to find that money. I am in a very receptive mode as to any suggestions that you might have.

Senator GREGG. Have you ever tried tents?

Mr. HUNDT. Yes; but it is so hard to work those computers in there; you know. [Laughter.]

Senator GREGG. You run them off the lightning.

#### ALCOHOL ADVERTISEMENTS

Can you assess the alcohol advertising policy.

Mr. HUNDT. Yes; the networks have publicly said that for their owned and operated stations, and for the advertising the networks are responsible for, they are making the individual decisions not to welcome hard liquor advertising.

However, the affiliates, you know, the bulk of the stations in this country, they have their own time as everybody knows, and some of them—no one knows exactly how many—are carrying hard liquor ads. We do not actually have the facts here. You know, one thing that I think we ought to do is have a notice of inquiry so that we learn the facts. Some people say that there are 100 plus stations carrying these ads. Others say that there are 50 some stations.

I would like to be able to give you the facts on this situation and that is why I think we should vote a notice of inquiry and develop a factual record, and be able to report to you and to the country on this topic. I want to say that I am certainly not faulting the networks. I mean to be complimenting them. But I just cannot tell you what the pattern is across the country, and the percentage amount of advertising time is primarily local. So that is a big concern.

## DIRECT APPROPRIATIONS INCREASE

Senator GREGG. Now the dollar increase that you have here in direct appropriation goes up rather dramatically on a percentage basis, dollarwise. It is not dramatic, I suppose, by our numbers, but still, percentagewise an increase. The vast majority of that is a function of your higher rent costs?

Mr. HUNDT. The primary, indeed, the overwhelming reason for the fact that you are remarking is the move to Portals.

Senator GREGG. Senator Domenici.

Senator DOMENICI. I have a series of questions regarding digital TV, and I think I am just going to submit them to you. I would really appreciate it, if the chairman would concur in this, and the ranking member, if you would answer them for the committee, quickly.

I would ask exceptionally quickly. We are reviewing the numbers in the Budget Committee, and we would like to get your version of various spectrum ideas that are being discussed. Could you do that for us?

Mr. HUNDT. Sure. Would next week be all right?

Senator DOMENICI. Noon. Start on them today. [Laughter.]

It would be very helpful if you could have the response by tomorrow night.

Mr. HUNDT. OK. We will give it a crack. Oh, you have got it right here.

Senator DOMENICI. I am going to leave the questions with you.

Mr. HUNDT. OK.

Senator DOMENICI. I was going to ask them while we are here, but I do not want to keep all these people. I arrived too late to delay people.

Mr. HUNDT. All right. We will get you something, for sure, by tomorrow night, and if one of them seems to take a little longer, I will tell you by tomorrow night.

Senator DOMENICI. All right.

Mr. HUNDT. Is that all right?

Senator DOMENICI. It should come to the committee, even though—I mean, this should not be with me.

Senator GREGG. No; communicate directly to the chairman of the Budget Committee.

Senator DOMENICI. Thank you.

## APPROPRIATION REQUEST

Senator BURNS. Mr. Chairman, what is the increase in the request?

Senator GREGG. Well, it is about 55 percent on a percentage basis of the direct appropriations as opposed to, I think, \$36 to \$55 million. Last year, we went up about \$10 million on the direct appropriation, so it is going up, rather dramatically. But I am not really sure it is all the FCC's problem. A lot of it is the cost of this new building.

## ADDITIONAL COMMITTEE QUESTIONS

Does anybody else have any questions?

Senator BURNS. No; I would like to get a copy when you furnish it—

Senator GREGG. Yes; obviously copy us with the answers, but do please go directly to the chairman of the Budget Committee.

Senator HOLLINGS. I would not be too bullish on this spectrum. It is a disease. Everybody's got a program and they are going to sell spectrum, sell spectrum, sell spectrum, and it is not going to happen, ultimately, as you and I both know.

Senator GREGG. And it is important that we protect the spectrum for the law enforcement community and the Defense Department.

[The following questions were not asked at the hearing, but were submitted to the Commission for response subsequent to the hearing:]

#### QUESTIONS SUBMITTED BY SENATOR PETE V. DOMENICI

##### ACCESS CHARGES

*Question.* Chairman Hundt, many rural telephone companies and cooperatives are quite concerned about the FCC's forward looking costs in interconnection and proxy models under Joint Board's recommendation. The rural providers believe that such cost models are inadequate and do not provide sufficient flexibility and predictability. I am concerned about the interaction of the FCC's interconnection and access charge reform proceedings with universal service. If the Commission does not provide an adequate cost formula for rural and high cost areas, it could have a profound effect on phone rates and infrastructure development and investment.

Does the FCC have any plans to significantly modify current Access Charge fees?

Answer. According to the FCC's plan, all rural telephone companies would receive universal service support according to the same formulas used today. The plan adopted by the Commission on May 7th reforms the access charge system for the largest local telephone companies that are subject to the FCC's price cap regulation. These companies include the Bell Operating Companies, GTE and other large independents. For companies other than price cap carriers, which includes the vast majority of local telephone companies that provide service in rural areas, we will, with minor exceptions, maintain the current access charge regime. Later this year, we will consider what changes are warranted for these companies in a separate rule-making proceeding, where we can give proper attention to the special circumstances these companies face. In its May 7th decision, the Commission balanced various goals, which included keeping low flat rates for residential consumers to promote universal service, lowering per-minute charges for long distance service to stimulate demand and promote efficient use of the network, and ensuring that local telephone companies have incentives to continue to invest in the local network. For the largest local telephone companies, the Commission will reduce the per-minute charges collected and will allow them to recover more of their revenues through flat charges collected from long distance companies. This will make the recovery of access charges more economically efficient and reflective of the way costs are incurred. These changes should help permit all carriers, both incumbent local telephone companies and new entrants, to compete fairly for the local exchange business, without either having an advantage for a particular type of customer.

*Question.* Does the FCC currently have any plans to eliminate the cap on End User Charges or Subscriber Line Charges placed on second telephone lines for either residences or businesses in rural areas?

Answer. In its recent Order, the Commission did not change the Subscriber Line Charge (SLC) for small rural carriers. For large price cap companies, the Order maintains current SLC caps for primary residential and single-line businesses and gradually reduces the subsidy for second line residential and multi-line businesses. This is consistent with the unanimous recommendation of the Federal-State Joint Board. The Universal Service Joint Board concluded that the current \$3.50 cap on the Subscriber Line Charge (SLC) for primary residential and single-line business lines should not be increased. The Joint Board, however, did not recommend that the SLC cap should be maintained for multi-line business or residential connections beyond the primary connection. The Commission's plan, consistent with the Joint Board's view, does not increase SLC charges on primary residential or single-line businesses.

In its rulemaking, the Commission ensured that the prescribed changes in access charges would have minimal impact on residential or business consumers, and especially those in rural areas. We believe that the resulting plan will lead to lower long distance charges on these customers' bills. The May 5th pledge by AT&T to pass-through access charge reductions to consumers underscores the validity of this approach. In addition, a recent SBA study shows that small businesses in rural areas are bigger users of long distance than urban small businesses. Therefore, we predict these businesses will be recipients of even larger decreases in their long distance bills.

*Question.* Is the FCC currently working to develop a more accurate proxy model for local telephone companies which will ensure adequate and accurate cost recovery? Please explain your answer.

*Answer.* The Joint Board recommended that the Commission use a forward-looking cost model to calculate the forward-looking costs of providing the supported services but it did not recommend a specific model.

On March 26, 1997, the state members of the Joint Board submitted a report to the Commission regarding the cost models. In the report, the state members stated that they have serious concerns about the adequacy and accuracy of the cost models at this point. Nonetheless, the state members recommended that the Commission select one model as soon as possible to focus the efforts of the Commission and industry. The state members, however, did not make a recommendation on which model the Commission should select.

We remain committed to using a forward-looking cost methodology to determine universal service support. However, we are also concerned about which model provides the most workable, reliable mechanism that could be used to calculate universal service support for large, non-rural carriers. As recommended by the Joint Board, we will take specific steps to adopt a forward-looking economic cost methodology for determining support in high cost areas. First, by the end of June 1997, the Commission will issue a further Notice of Proposed Rulemaking seeking additional information to help the Commission select a model. By August 15, 1997, the states will notify the Commission of their intent to either develop their own forward-looking economic cost study or use the one developed by the Commission. By February 6, 1998, states must file their forward-looking economic cost studies with the Commission. The Commission will place the state-filed forward-looking economic cost studies on public notice and review them to ensure consistency with federal guidelines. The mechanism for determining high cost universal service support, based on forward-looking economic cost, will become effective on January 1, 1999.

*Question.* Understanding the dilemma the FCC is currently facing regarding proxy models which do not work, is the FCC confident that an accurate proxy model can be developed for rural high cost local telephone carriers and cooperatives?

*Answer.* The Commission intends to provide support for universal service in rural areas consistent with section 254(b)(3), which states:

*Access in rural and high cost areas.*—Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

The Commission recognized that it will be more difficult to develop a forward-looking economic cost model methodology for rural carriers than for non-rural carriers and more time would be necessary to develop a model that accounts for the unique needs of rural carriers. This concern led the Joint Board to recommend that the Commission, working with state commissions, review any proxy model used by the Commission to ensure that it takes into consideration the unique circumstances of rural carriers. On May 26, 1997, the state members of the Joint Board submitted a report to the Commission regarding the cost models. The report found that the cost models were not sufficiently developed to be used for rural carriers.

Consistent with the recommendation of the Joint Board, the Commission has determined that rural carriers should move to a forward-looking economic cost methodology, but should not do so immediately. We will require rural carriers to calculate support based on forward-looking economic costs once a method suitable for application to rural carriers is developed and validated. The Commission will issue a Further Notice of Proposed Rulemaking to address issues unique to rural areas by October 1998. The Commission also supports the establishment of a rural task force, consistent with commenters and the State Members' Report, to study the development and impact of a forward-looking cost methodology for rural carriers.

Until a forward-looking cost methodology is selected for rural carriers, they will receive universal service support for all lines, using the same formulas in effect today, with slight modifications, until December 31, 1999. On January 1, 2000, this support will be adjusted for inflation.

*Question.* Chairman Hundt, one concern we are hearing with regard to the Interconnection order is how that order may have adverse implications on the Universal Service fund.

Is it true that a competing telephone company can purchase unbundled network elements and then rebundle those elements to avoid paying access charges? And if it is true, would you please explain why this is permitted.

*Answer.* First, in the Local Competition Order, the Commission held that a competing telephone company that purchased unbundled network elements should not also be required to pay intrastate and interstate access charges to the incumbent local telephone company to use those elements to provide long-distance service. Parts of that order have been stayed by the United States Court of Appeals for the Eighth Circuit on jurisdictional grounds.

We examined this issue in our current interstate access reform proceeding based on our jurisdiction over interstate access charges. Specifically, we examined whether any new entrant paying cost-based rates to the incumbent local telephone company would have already compensated that company for the ability to deploy unbundled network elements to provide originating and terminating access. We considered whether adding access charges to the price of unbundled elements, would impair, if not foreclose, new entrants' ability to offer competitive access services through the use of unbundled network.

In our Access Reform Order released on May 9, 1997, we stated that we will exclude unbundled network elements from Part 69 access charges. This conclusion applies to all incumbent LEC's. As we noted in the Local Competition Order, payment of cost-based rates represents full compensation to the incumbent LEC for use of the network elements that carriers purchase. We further noted that sections 251(c)(3) and 252(d)(1), the statutory provisions establishing the unbundling obligation and the determination of network element charges, do not compel telecommunications carriers using unbundled network elements to pay access charges. Moreover, these provisions do not restrict the ability of carriers to use network elements to provide originating and terminating access. Allowing incumbent LEC's to recover access charges in addition to the reasonable cost of such facilities would constitute double recovery because the ability to provide access services is already included in the cost of the access facilities themselves. Excluding access charges from unbundled elements ensures that unbundled elements can be used to provide services at competitive levels, promoting the underlying purpose of the 1996 Act.

#### UNIVERSAL SERVICE

*Question.* Does the FCC plan on discontinuing Universal Support services to multi-line small businesses in rural, high-cost regions? And if so, when would this plan take effect?

*Answer.* Under our plan, "rural" phone companies (phone companies serving study areas with less than 100,000 lines) will continue to receive support for all lines—including business lines—using the same formulas used today. We will maintain the existing mechanism for "non-rural" carriers (phone companies serving study areas with more than or equal to 100,000 lines) for an additional year while we resolve issues concerning a forward-looking economic cost methodology. The existing support system will continue to be applied to large non-rural carriers and to fund all lines. This system will be funded on a new basis—with funds collected based on interstate revenues of all telecommunications providers. By August 1998, we will adopt a forward-looking cost methodology on which support for all non-rural carriers will be based, with implementation beginning January 1, 1999.

*Question.* Does the FCC propose to limit Universal Service support to second telephone lines in homes of rural, high-cost regions? And if so, when are these plans to be implemented?

*Answer.* As noted above, under the Commission's plan, rural phone companies will continue to receive universal service support for all lines—including second residential lines—using the same formulas in use today. We will review these decisions during the course of implementing a forward-looking cost methodology for determining high cost support for rural carriers.

*Question.* Does the FCC have plans to place a cap on the Universal Service fund? And if so, would you explain your reasoning for this decision.

*Answer.* The Joint Board did not recommend a specific cap for the universal service fund. However, the Board recommended that support for schools and libraries

be capped at \$2.25 billion per year. The Commission adopted the annual cap for the school and library fund in its recent Order. However, in assessing the certainty for universal service to respond over time to meet the changing needs of consumers and the marketplace, the Commission did not institute a cap on the overall universal service fund as part of its May 7th decision.

*Question.* Does the FCC still contend that only Interstate revenues should be used to fund the Universal Service Fund? And if so, could you please explain why you are not considering Intrastate revenues?

*Answer.* The Federal-State Joint Board on Universal Service recommended that support for schools, libraries, and rural health care providers be based on interstate and intrastate telecommunications revenues. The Joint Board did not issue a recommendation regarding the assessment base for contributions for the high cost and low income programs.

The Commission adopted the Joint Board's recommendation regarding the assessment base for schools, libraries, and rural health care providers and will base contributions to federal support for schools, libraries, and rural health care providers on interstate and intrastate end-user telecommunications revenues. Carriers will be permitted to recover their contributions to the universal service fund through the interstate jurisdiction. It should be noted that commenters in this proceeding contend that any requirement by the Commission to recover universal service funding from intrastate revenues would infringe upon states' jurisdiction over local rate-setting, as provided in Section 2(B) of the Telecommunications Act. Because the Joint Board did not issue a recommendation regarding the assessment base for support for the high cost and low income programs and because states had not reached a consensus on this issue, the Commission adopted an approach that maintains historical jurisdictional lines and will base contributions to federal support for high cost areas on interstate end-user telecommunications revenues. Contributions for the new federal universal service support mechanisms will be collected beginning January 1, 1998.

#### DIGITAL TELEVISION

*Question.* Chairman Hundt, the FCC has recently cleared the way for broadcasters to begin the transition to digital television. While I support the eventual transition to this new and improved medium, I still have grave concerns with the transition schedule for smaller rural states like New Mexico. I continue to hear from numerous New Mexicans who are worried that they will soon be faced with purchasing a new, much more expensive television set in the near future. Mr. Chairman, I believe the FCC should make better efforts to inform the public of the actual digital transition schedule. You may not realize it here in Washington, D.C., but \$1,000 is still a lot of money in New Mexico—especially for a television set.

Will you please outline before this committee what New Mexico citizens and broadcasters can expect with regard to the digital ruling by the FCC?

*Answer.* The citizens of New Mexico are served by television broadcasters in three markets: Albuquerque-Santa Fe (market number 48), El Paso (99) and Amarillo (126). Under the rules adopted April 3, 1997, commercial broadcasters in those markets (in fact in all markets above the 30th largest) would have until May 1, 2002 to build digital broadcast facilities. Non-commercial broadcasters would have until May 1, 2003.

For New Mexico's television viewers, the situation is as follows. For those viewers who rely upon cable or satellite as their primary source of video programming, they will, for all practical purposes, see no difference other than what their service provider chooses to offer with respect to advanced technologies. For the approximately 35 percent of the population that relies upon the over the air service, they can choose to buy a new digital television when they are ready, based on their own needs. By the time broadcasters in New Mexico are required to be providing digital signals, the consumer electronics manufacturers expect to have reached the necessary volumes of production (in excess of 1,000,000 per year) which drive prices down rapidly. Furthermore, computer manufacturers have proposed that they will provide tens of millions of DTV-ready PC's by that time, with little more than \$100 additional costs to consumers, helping to increase consumer acceptance of DTV.

Still, it is clear there may be some consumers who will not, even by 2006, buy new digital televisions. It is our expectation, based on the comments received in response to our Notices, that there will be low cost set-top convertor devices, similar in size, cost and complexity to a cable convertor box today which will allow viewers to benefit from the digital signal without needing to buy an entirely new set.

*Question.* When do you anticipate rural states like New Mexico will see the full transition to digital television?

Answer. As discussed above, it is our expectation that a target of 2006 for the cessation of analog service is reasonable. As many commenters in our proceedings have made clear, as digital technology has developed, we have had reason to expect that DTV may be adopted more quickly than originally anticipated. Competitors in the video programming market, such as DBS, cable and wireless cable, have aggressively pursued the potential of digital technology. This competitive pressure has lent urgency to the need for broadcasters to convert rapidly. Furthermore, technological advances will continue to lower costs to broadcasters; for example, new technology may allow some broadcasters to use existing towers for digital transmission, thus easing the expense of converting to digital equipment. Similarly, on the consumer side, ongoing development to meet consumer demand will bring down costs of converter boxes necessary to fully transition from analog to digital technology.

*Question.* New Mexico, due to its large land area and rural population, must utilize several translators to provide television throughout the state. What impacts, if any, will be felt by translators during this transition to digital television?

Answer. In our Sixth Further Notice of Proposed Rule Making (Notice) in the digital television proceeding, we observed that various spectrum studies have indicated that in order to provide DTV channels for all eligible full service broadcasters it will be necessary to displace low power TV (LPTV) and TV translator stations to some degree. The task of analyzing the impact of DTV on LPTV and TV translator stations is extremely complex and station specific. Because of this, we can only approximate the number of LPTV and TV translator stations that will be affected or have to cease operation to accommodate new full service DTV stations. In the Notice, we estimated that about 55 to 65 percent of all existing LPTV stations and about 80 to 90 percent of all TV translators would be able to continue to operate. We also noted that about 17 percent of all LPTV and TV translator stations operate on channels 60–69 and could be affected by our proposals to recover those channels. We have conducted a similar analysis of the final DTV Table of Allotments that was adopted in our recently adopted Sixth Report and Order in the DTV proceeding. The estimates provided by this new analysis confirm our initial studies of LPTV and TV translator impact. There are currently about 360 LPTV and TV translator stations in the state of New Mexico. We estimate that about 330 of these stations, or 92 percent, will not be affected by new DTV operations. However, there are about 70 low power stations on channels 60–69 in New Mexico. These stations may be affected by our plans to recover this spectrum for public safety and other uses.

LPTV and TV translator stations can be affected in different ways by the DTV implementation process. Initially, we note that an LPTV or TV translator station will be affected only if it causes interference to a new DTV station or if it receives interference from such a station. Other LPTV and TV translator stations will not be affected. As secondary operations, LPTV and TV translator stations that cause interference to DTV stations will be required to take steps to eliminate that interference. In some cases, LPTV and TV translators will be able to resolve the interference by changing their operation through methods such as using a directional antenna or reducing their power. In a few cases, the only solution will be to cease operating. If the LPTV or TV translator receives interference, the licensee may decide to simply accept the interference and continue to operate. This could occur, for example, if only a portion of the LPTV or translator station's service is affected.

We have also amended our rules to mitigate any impact on low power operations. In this regard, we have amended the low power rules to eliminate a number of existing restrictions on their operations and to provide more opportunities for low power stations to find replacement channels where necessary. We have also allowed low power operators to take into account terrain and other factors in avoiding interference to full service TV and other primary operations.

*Question.* Understanding the significant costs involved in modifying a television station to transmit digital signals, how many, if any, independent and public television stations does the FCC anticipate will be unable to make the transition due to financial reasons?

Answer. Our requirements to fulfill their obligation to receive "credit" for building a digital facility are designed to provide broad flexibility to licensees. There is no requirement to produce programming on site, and licensees need only serve their community of license. While we would hope that broadcasters would choose, on their own, to develop advanced capabilities and serve large areas, our regulation should allow even an independent licensee to meet its obligations. Many broadcasters have been investing in digital equipment for some years already, due to the inherently more efficient and reliable features afforded by digital technology. It was widely reported at the recent NAB convention in Las Vegas that equipment manufacturers expect costs of digital equipment to keep going down. It is our expectation that a well planned capital budgeting process over the five years New Mexico broadcasters

have to introduce digital services would not unduly burden even these small market broadcasters.

Furthermore, with respect to public television stations, we extend an additional year and will grant special treatment to afford them every opportunity to participate in this transition, and will deal with them in a lenient manner in considering requests for extensions.

*Question.* Will any currently operating translators or television stations in New Mexico be forced to relinquish any spectrum for the transition to digital television?

*Answer.* As indicated above, there may be some impact on translators in New Mexico. With regard to recovery of channels 60–69, this will only occur if this spectrum is used for new services. In largely rural areas, such as those served by translators in New Mexico, the volume of communications traffic is generally lower and spectrum is less congested. We therefore would expect that in those areas the need for new services will be lower and fewer translators will be affected than the worst case estimate provided above.

#### SPECTRUM-TRANSITION TO DIGITAL TV

*Question.* With respect to the rules for Digital Television (DTV) service adopted by the Commission on April 3, 1997, what is the sequence of events for the transition to DTV that you expect to occur over the next ten years? Do you anticipate court challenges against the DTV Table of Allotments? Will broadcasters have to apply for the second channel? When does the FCC expect to approve the applications and what transactions will occur that will constitute the “loaning” of the second channel? How would any Congressional action related to the transition affect the process if such action were to occur before the second channel is actually awarded to the broadcasters?

*Answer.* On April 3, 1997, the Commission adopted two Reports and Orders in the DTV proceeding: the Sixth Report and Order sets forth a DTV Table of Allotments listing the channels that will be awarded; the other, the Fifth Report and Order, sets forth the rules applicable to eligible licensees. The Commission expects to release both Orders next week. Like all other Commission decisions in rule-making proceedings, the two DTV Orders are subject to administrative and judicial review, upon the filing of a timely petition for reconsideration by an interested person. Unless the Commission or a federal court issues a stay, however, the rules issued remain effective during any period of reconsideration or on appeal.

The process of obtaining the DTV licenses will be as follows. In the Fifth Report and Order, the Commission will issue a list of licensees and permittees eligible for a DTV channel, pursuant to the Telecommunications Act of 1996. We will also provide a cancellation procedure, so that the Commission can reclaim quickly the DTV channels of those licensees and permittees not interested in converting to DTV. The Commission expects those licensees and permittees that will convert to DTV to file an application for a construction permit to build the DTV facility. We have provided a streamlined process for them to do so. Under this certification procedure, if an applicant can answer “yes” to a list of questions designed to elicit required technical information about the proposed DTV facility, the application can be granted within a matter of days. Other applicants will be required to provide additional technical information. Upon grant of a construction permit, the applicant can commence construction of the DTV facility on its 6 MHz channel. Finally, once the DTV facility has been built and is ready to go on the air, we will authorize the permittee to begin operation upon notification to the FCC, provided that an application for a license is filed within 10 days. The process is designed to be simple and quick, while ensuring that the FCC has the information it needs to carry out its interference protection and other responsibilities.

The Commission’s rules are also intended to provide for an expeditious buildout of DTV. Those rules require affiliates of the top four networks in the top 10 markets to be on the air with a digital signal by May 1, 1999. Affiliates of the top four networks in markets 11–30 must be on the air by November 1, 1999. The top ten markets include 30 percent of television households, while the top 30 markets include 53 percent of television households. A number of broadcasters in the top ten markets have committed to begin digital operations within 18 months. All other broadcast stations are required to be on the air with a digital signal within five years. Because an important goal in our DTV proceeding is the return of the analog spectrum at the end of the DTV transition period, the Commission has set a target date of 2006 as a reasonable end-date for analog television service. The Commission will review that date in periodic reviews, which will be conducted every two years to allow evaluation of the progress of DTV and changes in Commission rules, if necessary.

In the months leading up to DTV, many broadcasters across the country, in anticipation of our DTV Orders, began taking measures to prepare for DTV transmissions, including investing in new hardware. The Commission expects, and intends to ensure, that unless otherwise stayed the transition to DTV will continue at a brisk pace.

*Question.* Based on the Commission's experience with spectrum auctions to date, does it make sense, as a matter of spectrum policy, for the Federal Government to hold an auction five years before the date that it may be able to deliver spectrum licenses to those who bid on it? Wouldn't an auction raise more money (present value discounting aside) if it were an auction of spectrum that the federal government had certainty of delivering?

*Answer.* The DTV Table of Allotments set forth in the Sixth Report and Order recovers 138 MHz of spectrum—60 MHz immediately and 78 MHz in ten years. Early recovery is made possible by an allotment plan that minimizes the number of digital channels above channel 59. Some of the spectrum that the FCC will recover immediately—24 MHz—can be quickly reallocated to help address the serious needs of public safety users. The remaining 36 MHz from channels 60–69 can be reallocated expeditiously and assigned using competitive bidding. The remaining 78 MHz, which will become available at the end of the transition ten years from now, can be assigned using competitive bidding for any use that the public desires.

Based on the Commission's experience with 14 spectrum auctions to date, we have found that prospective bidders for new communications licenses generally need at least one year's notice of an upcoming auction. We believe, for example, that one reason the Commission's ongoing auction for Wireless Communications Services appears to be falling short of the Congressional Budget Office's revenue estimates is that prospective bidders had only five-and-one-half months' notice between the date the auction was enacted into law as part of the Omnibus Consolidated Appropriations Act of 1997 (Public Law 104–208) and the April 15, 1997 statutory deadline for commencing the auction. Bidders need a reasonable time to develop their business plans for new competitive communications services and to access capital.

In the case of recovered broadcast spectrum, there may be advantages to an early auction. Recovering analog broadcast spectrum expeditiously requires that broadcasters be on notice of a date certain for the return of those channels and a corresponding commitment by Congress and the FCC to enforce the timetable for recovery. Auctioning recovered broadcast spectrum even five years in advance of the anticipated recovery would strengthen this commitment by creating a class of private parties with an economic interest in assuring that the recovery occurs.

*Question.* What gives the Commission confidence that it will be able to retrieve the analog spectrum from broadcasters to deliver it to the winning bidders, especially given that broadcasters say the transition to DTV may take longer than the year 2006 and that they may not be in a position to return the spectrum that early?

*Answer.* As explained in the answer to Question 1, the Commission adopted rules designed to provide for an expeditious buildout of DTV. As I stated when the FCC adopted the DTV rules on April 3, however, I am concerned by the Commission's decision not to adopt a phased-in build out rule for markets 30–211. The failure to do so means that over 90 percent of television stations have no requirement to build out before five years. This puts our spectrum recovery goals unnecessarily at risk. While I believe there is a good chance that market forces generated by a rapid buildout in the top 30 markets will cause the remaining markets to build out relatively quickly, I would have preferred not to leave this to chance. I hope the Commission will revisit this decision as early as next year. Moreover, to the extent Congress shares this concern about the prospects for a DTV buildout that recovers all 78 MHz of spectrum by 2006, it may want to pass legislation codifying the 2006 deadline for the DTV transition. A statutory deadline would strengthen significantly the Commission's efforts to ensure a timely buildout.

*Question.* If the Administration's spectrum proposal were to be adopted, how would the FCC levy and collect any shortfall in anticipated receipts from an auction of returned broadcast spectrum? That is to say, by what mechanism would the FCC ensure the integrity of the process of holding broadcasters accountable for this obligation to cover any shortfall?

*Answer.* The best way to avoid a shortfall in receipts anticipated from auctioning the 78 MHz of broadcast spectrum recovered by the Commission's Sixth Report and Order is to recover that spectrum as rapidly as possible. This is why I hope the Commission will revisit its decision not to adopt a phased-in buildout rate for DTV licensees in markets 30–211. The Commission has not yet considered a mechanism by which it would hold broadcasters responsible for any shortfall in spectrum auction receipts. Should such a mechanism become necessary, there are many ways of addressing this issue, and the Commission would welcome the opportunity and the

flexibility to explore these options fully and to find a solution that maximizes public and private benefit.

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QUESTIONS SUBMITTED BY SENATOR ERNEST F. HOLLINGS

CABLE RATE INCREASES

*Question.* The 1992 Cable Act authorized the FCC to regulate rates for cable service not subject to effective competition. Since that time, the FCC has adopted its "going forward" rules and allowed annual adjustments of rates. The 1996 Act preserved FCC authority to regulate rates through March 31, 1999 yet press reports indicate that rates continue to rise 3 times inflation. Do you have the authority to curtail these rate increases?

Could you provide for the Committee options available to the FCC under its current statutory authority that would curtail these rate increases through March 31, 1999?

*Answer.* The 1992 Cable Act directs the Commission to ensure, through regulation, that cable rates are not unreasonable by simulating the effects of competition until actual competition emerges in the marketplace. In 1993, the Commission found that, on average, the rates charged by cable systems that did not face effective competition were approximately 10 percent higher than the rates charged by comparable systems that were subject to effective competition. This "competitive differential" meant that cable systems that were not subject to effective competition were generally required either to set cable rates to their September 30, 1992 levels and then apply a 10 percent reduction or to submit a cost-of-service showing to justify higher rates. In 1994, the Commission revised the competitive differential from 10 percent to 17 percent. This revision generally reduced cable rates by an additional 7 percent.

The data collected for our 1996 Price Survey indicate that the goal of the 1992 Cable Act is being met. The differential between average rates charged by competitive and noncompetitive cable operators narrowed significantly after the introduction of rate regulation. On August 31, 1993, the average cable rate for services and equipment charged by the competitive group was \$20.51 per month, and the average charged by the noncompetitive group was \$22.23 per month, for a differential of 8.4 percent. After the imposition of rate regulation, the differential narrowed significantly, to 2.7 percent in July 1994 and to 2.3 percent by January 1995.

Reviewing the entire period of rate regulation (from April 1993 to the end of 1996), finds that the Cable CPI increased at a slower rate than general inflation. The Cable CPI increased by 8.4 percent, or at a 2.3 percent compound annual ("CA") rate, versus a 10.2 percent increase for the general CPI, or a 2.7 percent CA rate, over the entire forty-five month period. The Commission's rules allow cable operators to adjust their rates to account for inflation and to pass through to subscribers certain external costs. These costs are: (1) state and local taxes applicable to the provision of cable service; (2) franchise fees; (3) costs of complying with franchise requirements; (4) retransmission consent fees and copyright fees; (5) other programming costs; and (6) Commission regulatory fees imposed pursuant to 47 U.S.C. § 159. The Commission also allows operators to recover the costs of substantial upgrades to their networks.

Recent rate increases appear to be due to general inflation, increases in external costs and expenses associated with network upgrades. The Commission has allowed inflation adjustments of 2.15 percent, 2.96 percent and 2.14 percent for the periods ending June 30 of 1994, 1995 and 1996, respectively. Over the past five years, programming license fees for the national networks have risen at a CA rate of 8.4 percent versus a 2.8 percent rate for the general CPI, or nearly three times the general rate of inflation.

The Commission could modify its rules to reduce or eliminate the pass-through of some or all of the costs that operators are permitted to pass through under the Commission's current rules. The elements at stake in such a decision include the diversity and quality of cable programming, the financial stability of the cable operator, the revenues which flow from the cable operator to the state and local governments, and the quality of the nation's infrastructure.

The Commission adopted new "going forward" rules in 1994 as a means of encouraging cable operators to provide new programming. Prior to the adoption of these "going forward" rules, cable operators were allowed a rate increase (as determined by the Commission) to reflect the costs of adding new channels and to obtain a 7.5 percent mark-up on new programming costs. The Commission concluded that this

did not provide most cable operators with sufficient incentive to provide subscribers with additional channels from either unused or new capacity.

Operators electing to use the 1994 "going forward" rules may take a per-channel mark-up of up to 20 cents for each channel added to a cable programming service tier. This 20 cents represents the Commission's best estimate of the average amount by which operators in a competitive environment would adjust rates for a new channel, exclusive of programming costs. Operators are allowed to recover for the addition of channels at any time during a three-year period beginning on January 1, 1995. The per-channel adjustment to the monthly rate cannot exceed \$1.20 per subscriber over the first two years (the "Operator's Cap") or \$1.40 over the full three-year period. During the third year, operators can only take the final 20 cent adjustment for channels added in that year. For channels added pursuant to these "going forward" rules, operators may not take the 7.5 percent mark-up on programming costs allowed under the initial rate rules.

The Operator's Cap is based on the Commission's observations of cable industry behavior prior to the 1992 Cable Act, adjusted for the lack of effective competition, so as to replicate a competitive market. The Operator's Cap provides an incentive to operators to provide new services while protecting consumers by keeping overall regulated rates reasonable. Operators may use a portion of the Operator's Cap to pay license fees. Operators were also allowed to add a maximum of 30 cents per subscriber for programming costs associated with adding new channels (the "License Fee Reserve") during 1995 and 1996. The License Fee Reserve was necessary because, without one, operators would have an incentive to add no-cost or low-cost channels instead of channels that may have been more in demand by subscribers. In 1997, license fees are no longer subject to special rules, but are treated as external costs. The 1994 "going forward" rules expire on January 1, 1998, unless renewed by the Commission. If allowed to expire, cable operators will no longer be able to adjust their rates pursuant to these rules.

In 1995, the Commission granted operators the option of adjusting rates annually, rather than quarterly. The parties involved in this proceeding, including local franchising authorities, generally agreed that cable operators should be encouraged to reduce the number of rate filings. The adoption of the optional annual rate adjustment limits subscriber frustration and confusion because subscribers do not have to contend with numerous rate adjustments during a given year. Regulatory authorities also benefit because the number of rate adjustments requiring review is minimized.

The most effective deterrent to rate increases is the availability of competitive choices. In the absence of a competitive environment, the Commission's policies have sought to balance the goal of providing subscribers choices in cable programming at reasonable rates while affording cable operators an incentive for expanding and improving service. In the Commission's review of the "going forward" rules, we will undertake to examine with more focus the source of recent rate increases and what direction rate regulation should take.

#### UNIVERSAL SERVICE

*Question.* In testimony before the Commerce Committee you stated that you would take no action to increase local phone bills. Do you intend to impose on consumers any flat end user fees or increases in the Subscriber Line Charges as part of either the Universal Service or Access Reform?

*Answer.* The Universal Service Joint Board concluded that the current \$3.50 cap on the Subscriber Line Charge (SLC) for primary residential and single-line business lines should not be increased. The Joint Board, however, did not recommend that the SLC cap should be maintained for multi-line business or residential connections beyond the primary connection. In our Access Reform Notice of Proposed Rulemaking, the Commission asked for comment on whether to raise the cap on the SLC for second and additional residential lines and for multi-line business lines for the largest telephone companies. Raising the current SLC cap on non-primary residential lines and multiline business lines should lead to lower long distance usage charges for consumers because these costs are currently recovered from usage charges assessed by local telephone companies to long distance carriers.

*Question.* Several of the Universal Service proposals under consideration would require an increase in the Subscriber Line Charges for second residential lines and multi-line businesses in rural areas. Do you support increasing these rates for rural areas?

*Answer.* As noted in the answer to the previous question, the Universal Service Joint Board did not recommend that the SLC cap should be maintained for multi-line business or residential connections beyond the primary connection. In our Ac-

cess Reform Notice of Proposed Rulemaking, the Commission asked for comment on whether to raise the cap on the SLC for second and additional residential lines and for multi-line business lines for the largest telephone companies. Raising the current SLC cap on non-primary residential lines and multiline business lines should lead to lower long distance usage charges for consumers because these costs are currently recovered from usage charges assessed by local telephone companies to long distance carriers. Many rural areas are served by small telephone companies, which are not the subject of the current access charge reform proceeding. Instead, the Commission intends to adopt a separate Notice of Proposed Rulemaking later this year that will address how the existing access charge rules should be reformed for small telephone companies.

*Question.* Chairman Hundt, you have recently been quoted in the press as saying that basic residential telephone rates in this country are currently being subsidized by long distance and other revenues to the tune of about \$20 billion. If universal service obligations amount to \$4 to \$6 billion, how will the FCC recommend that the remainder of that amount be treated? Will individual states have to create their own universal service fund to make up losses in subsidies from interstate long distance services? Will local residential phone rates have to increase?

*Answer.* The majority of subsidies currently available to local telephone companies are regulated by states and not by the Federal Government. Subsidies include mechanisms to shift costs from rural to urban areas, from residential to business customers, and from local to long distance service. The result of state requirements that local telephone rates be averaged across the state is that high density (urban) areas, where costs are typically lower, subsidize low density (rural) areas. State pricing rules have also created a business-to-residential subsidy by mandating that businesses pay more per line than residential customers. In addition, states have historically priced vertical services (such as caller i.d.) above cost in order to subsidize basic dialtone. On the Federal side, access charges have been set in order to recover certain loop costs not recovered through local rates, which results in long distance users subsidizing local users.

In section 254(f), the 1996 Act contemplates that state legislators and regulators will establish state universal service support mechanisms. Also, section 254(b)(5) states that there should be "specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service." The statute further provides that universal service support mechanisms should be revised in the context of a Federal-State Joint Board proceeding. Thus, states and the Commission are responsible for preserving universal service and must coordinate federal and state universal service programs.

The Act also requires that universal service support be "sufficient" to achieve the Act's goals. We will work with the states to maintain sufficient support for universal service, and intend to take into account any reductions in implicit support that result as we work with the states to move from the current support system to a system of explicit support. Under section 2(b) of the Communications Act, the states have sole jurisdiction over intrastate rates, and must approve any local rate increases. In implementing the 1996 Act, the Commission is dedicated to fulfilling the mandate of Section 254, ensuring that all consumers, including low-income consumers and those in rural, insular, and high cost areas, have access to telecommunications and information services at rates that are reasonably comparable to rates for similar services in urban areas. The Commission believes that its implementation of the 1996 Act will allow states to maintain rates at their current levels.

*Question.* Chairman Hundt, you have indicated an interest in "preserving comity" with the states, and therefore you would consider not exercising the FCC's authority to assess intrastate revenues for the Universal Service Fund at this time. What would be the implication of this decision on high cost states like South Carolina?

*Answer.* The Commission's goal in establishing a new mechanism for universal service support is to maintain telephone subscribership through better targeting of the support. Our actions this May will not reduce support for high cost rural telephone service. South Carolina would continue to receive at least the level of high cost loop support it currently receives.

*Question.* Effectively, the Joint Board Recommended Decision bases the amount of universal service support each rural telephone company receives during the transition period on the universal service support that company will receive in 1997. Most Average Schedule companies do not receive universal service support, but when they convert to cost status, many begin to receive it.

A company making a conversion in the middle of 1997 will only receive a partial year of support. Shouldn't their support during the transition period be calculated as if they had converted to cost status on January 1, 1997 in order to receive an entire year of universal service support?

Answer. Average schedule companies are exempt from the Commission's requirement of maintaining and filing annual cost studies to receive universal service support because the National Exchange Carrier Association, the administrator of the current universal service support mechanisms, calculates their operating expenses based on a formula that averages the costs of companies of similar sizes. Moreover, the Commission's rules do not specify particular accounting procedures for average schedule companies that convert to cost. Some average schedule companies, however, choose to conduct cost studies voluntarily.

NECA, through its internal procedures, prescribes the requirements that a company must follow to receive universal service support when it converts from average schedule to cost status. When an average schedule company converts to cost status, NECA gives the company the option either to continue to receive universal service support on an average schedule basis for the remainder of the year or to file a cost study for the previous year's cost data and begin receiving cost-based universal service payments as of the date of conversion to cost. Companies electing the second option, however, only receive universal service support payments for the period during the year they are receiving cost-based settlements. For example, if they convert to cost on April 1, they will receive eight-twelfths of the annual support amount. They will receive the full annual amount in the subsequent year.

If the Commission adopts the Joint Board's recommendation to calculate support for rural carriers during the transition based on the previous year's levels, we shall consider the impact this rule would have on rural carriers, including average schedule companies. We would consider proposals to permit average schedule companies that convert to cost to file an annualized cost study that projects the costs of the entire year based on the months for which a cost study is maintained.

*Question.* Chairman Hundt what is your position as to which entity should administer the interstate universal service fund?

Answer. The Joint Board recommended that the Commission create a Federal Advisory Committee to recommend a neutral, third-party administrator of the federal support mechanisms. The Joint Board stated that the third-party administrator must: (1) be neutral and impartial; (2) not advocate specific positions to the Commission in proceedings not related to the administration of the universal service support mechanisms; (3) not be aligned or associated with any particular industry segment; and (4) not have a direct financial interest in the support mechanisms established by the Commission. The Joint Board also recommended that the National Exchange Carrier Association (NECA) be appointed the temporary administrator of the support mechanisms, provided NECA was made more representative of non-LEC interests.

A majority of commenters support the Joint Board's recommendation that a neutral, third-party should administer the federal support mechanisms.

In January, the Commission initiated a proceeding examining changes to NECA's board of directors to include representation of non-LEC interests. The Commission initiated this proceeding in order to respond to the Joint Board's recommendation that NECA be appointed the temporary administrator of the support mechanisms only if its board membership were changed.

I support the Joint Board's recommendation.

*Question.* Chairman Hundt as competition for prime locations in the payphone market increases, do you not believe that the pressure of higher commissions, which will be demanded by location owners, will have the effect of driving up current monopoly payphone rates?

Answer. Competition for prime locations has existed in the payphone marketplace for over a decade, since independent payphone providers were first allowed to compete with the LEC's in the provision of payphone service. In enacting Section 276, Congress sought to take this competition a step further by putting all payphone service providers ("PSP's") on the same competitive footing to encourage the proliferation of payphones available for use by the public. More specifically, Congress sought to "promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public \* \* \*." To achieve these dual objectives, the Commission was entrusted with the responsibility to take certain actions to effectuate congressional goals in the payphone area, including the removal of subsidy schemes, providing for nondiscriminatory access to bottleneck facilities, ensuring fair compensation for all calls from payphones, and allowing all competitors equal opportunity to compete for essential aspects of the pay phone business.

The Commission, in turn, set forth a plan in the Payphone Reclassification Proceeding, to be achieved over time, that removes the various barriers to vigorous and unfettered competition, including barriers that are regulatory, structural, economic, and technological. This will allow new competitors to enter into the payphone mar-

ketplace with ease and, correspondingly, allow others to exit. As a result, while competition for prime payphone locations may increase, the Commission's deregulatory framework ensures that there will be more competitors who seek to provide more payphones at more locations. Thus, the Commission has fostered greater competition among market participants and simultaneously promoted the widespread deployment of payphones.

*Question.* The FCC has ordered that local call rates paid to payphone providers be priced through market rates by October 6, 1997. How do you believe end-user choice is going to be achieved as premises owners sign exclusive contracts which allow for only one payphone provider per location?

*Answer.* Prior to the Commission's adoption of the orders in the Payphone Reclassification Proceeding, PSP's frequently signed contracts with location owners for the exclusive right to provide payphones to callers at those particular locations. Nothing in Section 276 or the Commission's proceeding changed this practice, other than the statutory provision, Section 276(b)(1)(D), which allows Bell Operating Companies ("BOC's") to negotiate with the location owner about the operator service provider that is presubscribed to its payphones, a role that previously had been barred by a judicial decision. What Section 276 changed, however, was the level of competition for the right to provide payphones at all locations. Under the statute and the Commission's rules, a location owner now has the ability to select the best package of payphone services for the benefit of both itself and the payphone callers who visit its location.

As the Commission noted in the Payphone Reclassification Proceeding, five states have already deregulated local coin rates, which has led to statewide market-based rates ranging from \$.25 to \$.35 per call. In addition, whenever payphone end-users are not willing to pay the rates that are charged at a particular location's payphones, they "are free to seek alternative payphones in nearby locations or \* \* \* make calls from portable phones." Callers also have the option of waiting until they return to their homes or offices before making a call.

Under the Commission's deregulatory, market-based approach, competing PSP's have the ability to negotiate the placement of payphones at neighboring locations in an effort to capture business from the locations that charge rates the market will not support. In the limited circumstances in which an alternative location is not available to make a payphone call, the Commission provided that the states "are empowered to act by, for example, mandating that additional PSP's be allowed to provide payphones, or requiring that the PSP secure its contract through a competitive bidding process that ensures the lowest possible rate for callers. If a market failure persists after such action, the state should recommend the matter to the Commission for possible investigation."

In addition, Section 276(b)(2) of the Act directed the Commission to determine whether there is a need to maintain payphones to serve public health, safety, and welfare goals, and, if so, to ensure that such payphones are supported fairly and equitably. To this end, the Commission established guidelines by which the states may ensure the maintenance of payphones serving public interests in health, safety and welfare, in locations where they would not otherwise be available as a result of the operation of the market. Consistent with our primary reliance on the competitive marketplace, however, these guidelines require that the states administer and fund such public interest payphone programs in a manner which is competitively neutral, and which fairly and equitably compensates entities providing public interest payphones.

*Question.* The Federal-State Joint Board on universal service has advised the FCC to require schools and libraries to seek competitive bids for all services eligible for discounts under Section 254(h). Do you feel that schools should be required to accept the absolute rock-bottom bid, or should they have some flexibility to take quality into account and therefore be permitted to accept the bid offering the best value?

*Answer.* The Joint Board refrained from recommending that the FCC require schools and libraries to select the lowest bids offered to them. Instead, the Joint Board recommended that the FCC provide schools and libraries with "the maximum flexibility to purchase whatever package of telecommunications services they believe will meet their telecommunications service needs most effectively and efficiently." When the Joint Board explicitly addressed this issue in the context of access to the Internet, the Joint Board only recommended that the FCC require schools and libraries to select the most "cost-effective" provider of Internet access, not the lowest cost provider. Both the Joint Board and FCC also recognize that state and local procurement rules already generally require schools and libraries to satisfy a "best value" or similar standard and this is the standard with which both are most comfortable.

## QUESTIONS SUBMITTED BY SENATOR DANIEL K. INOUE

*Question.* Just one year ago, the FCC ruled that no DBS licensee with channels at a full-CONUS location could acquire channels at the 110 degree DBS orbital location without divesting its existing interest in full-CONUS channels. In its Order, the FCC stated: "We believe that we have the obligation to prevent the undue accumulation of full-CONUS DBS spectrum by any one firm and to encourage additional DBS entry by other firms as long as markets for the delivery of video programming remain highly concentrated." Clearly the markets for the delivery of video programming remain as highly concentrated today as they were one year ago. How can such a situation not be considered anticompetitive vis-a-vis other DBS providers? Should there be a different analysis on the effects of such concentration for a vertically-integrated entity?

*Answer.* In the satellite industry, and in particular the portion of the industry devoted to direct-to-home delivery of video programming, the Commission's recent experience is that rapid change is the norm, rather than the exception. For that reason, when we adopted the limitation on acquisition of channels at the 110 degree west orbital location, we indicated that it was intended as a one-time measure, and that it was premised on the circumstances facing us at that time. Revision of Rules and Policies for the Direct Broadcast Satellite Service, 11 FCC Rcd 9712 (1995) ("DBS Auction Order"). In particular, we mentioned the possibility that additional spectrum could become available for providing service to the United States, and that this could significantly affect any future analysis.

In the event the Commission is asked to evaluate a transaction that would have violated this one-time limitation, we will examine the same types of concerns that gave rise to the limit. As required by the Communications Act, that review would be undertaken based on the complete record and all relevant facts.

The Commission is aware that certain aspects of vertical arrangements can raise competitive concerns. See, e.g., Third Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, January 2, 1997. We would analyze any application relating to a proposed merger or similar transaction, including those involving vertical integration, to determine whether it presents competitive concerns.

*Question.* Should the proposed merger of News Corporation and Echostar proceed, News Corporation would control a television network, 28 stations, 24 radio stations, a major movie studio, a major book publisher, the New York Post, TV Guide, 9 regional cable sports networks, a number of cable television channels, including fX and the Fox News Channel, and a national DBS operation that would control a majority of the prime DBS slots in the United States. Do you have any concerns about the serious media concentrations issues raised by this merger?

*Answer.* Echostar and the News Corporation have not filed any applications with the FCC seeking approval of their announced merger, and recent press reports indicate that it is unclear whether the two companies intend to proceed with the deal. It is not clear exactly what questions any such applications, if filed, would raise regarding media ownership. In the event such applications are filed, the Commission will, pursuant to the Communications Act, put the applications out for public notice and comment and then carefully review them and make a determination on whether or not to grant them based on thorough consideration of the complete record. The Commission would examine all relevant facts and issues, including any which relate to concentration and competition.

*Question.* Federal law prohibits an entity from owning a cable TV system and a TV station in the same market. Yet, if the deal is permitted to go forward, News Corporation would control TV stations reaching 40 percent of all U.S. homes (News Corp. 1996 Annual Report) and a nationwide multichannel video programming distributor. Would you support similar cross-ownership limitations on a DBS provider retransmitting local signals?

*Answer.* The Commission has historically declined to impose cross-ownership limits with respect to DBS and other satellite services. As a result, the industry today includes investors from a wide range of industrial sectors, including cable, broadcast, common carrier, and satellite manufacturing sectors. Meaningful economic competition is the norm, rather than the exception, in the industry as currently structured.

It has been the Commission's experience that cross-ownership rules may prove either an aid or a hindrance to competition, depending on the particular competitive circumstances in the industry at any particular time. We view a number of provisions in the 1996 Telecommunications Act as recognizing this need for periodic service by service, case by case analysis. For example, recognizing that rapid changes in industry may affect the usefulness of ownership regulations, Congress has di-

rected a biennial review of ownership limitations. In general, any ownership regulation should be evaluated to determine whether it would advance competition by addressing a specific threat to meaningful economic competition, or whether it will limit meaningful economic competition by limiting marketplace participants artificially, thereby foreclosing public interest benefits that additional participants may foster.

*Question.* The FCC has an existing rule (100.11) that prohibits a foreign company from owning more than a 25 percent stake in a DBS license. In fact, all of our trading partners treat DBS as broadcasting. Why shouldn't that rule bar News Corporation, an Australian company, from acquiring a 40 percent interest in DBS licensee Echostar?

*Answer.* As a preliminary matter, Echostar and Newscorp have not filed any applications with the FCC seeking approval of their announced merger. It is not clear what, if any, questions any such applications, if filed, would raise regarding alien ownership restrictions.

The FCC's International Bureau has ruled that Section 100.11 of the Commission's Rules was not intended to prevent foreign ownership of a DBS licensee that provides service on a subscription basis. MCI Telecommunications Corporation, DA 96-1793 (released December 6, 1996). Applications for review of that ruling are now pending before the full Commission.

The Commission has regulated subscription DBS as a non-broadcast subscription service not subject to statutory provisions that apply specifically to broadcasters. Although many other nations regulate DBS as a broadcast service, not all countries do so. Moreover, most countries, recognizing that satellite services may warrant unique regulatory treatment, have not treated those services identically to terrestrial broadcast services. Furthermore, in both the United States and abroad, regulatory classifications have on occasion been flexibly applied to address unique characteristics of particular types of services, or to achieve certain public policy goals. For example, some European direct-to-home satellite services are provided via "Fixed Satellite Service," or FSS, frequencies, not broadcast satellite sound ("BSS") frequencies. In the same vein, for purposes of mandating public interest obligations, the Congress treated direct-to-home services provided by FSS and BSS identically.

*Question.* Would you support applying the existing program access rules to vertically integrated DBS providers to ensure against any potential anticompetitive behavior?

*Answer.* Current statutory and FCC regulatory provisions concerning program access were intended primarily to address concerns about the effects on competition of vertical integration by the cable industry. This concern arises out of cable systems' position as the dominant providers of multichannel video programming in most markets. To the extent it is proposed that similar limits be applied to vertical integration not involving the cable industry, we would wish to analyze whether the imposition of such limits would help or hinder competition. For example, such limits could impose a cost on an emerging competitor to cable, which could frustrate the underlying purpose of the statutory provisions.

*Question.* Would you support a prohibition on ASkyB from signing exclusive carriage agreements with the local Fox TV stations to ensure competitors, such as cable, have access to popular sports and entertainment packages offered by Fox?

In the 1992 Cable Act, Congress took steps to ensure competition and consumer choice in the video marketplace by enacting the program access rules. What happens if some satellite delivered programming currently subject to those rules is moved off satellite? For example, if cable owned a regional sports network and moved it from satellite to terrestrial delivery? Should the program access provision be revised to address this issue?

*Answer.* Both of these questions pertain to satellite exclusivity and are answered in the following response.

As an initial matter, it should be noted that the program access statute does not preclude exclusive contracts in all instances. In the 1992 Cable Act, Congress prohibited exclusive contracts between vertically integrated programming vendors and cable operators in areas unserved by cable and prohibited such exclusive contracts within areas served by cable, absent a specific public interest showing, for a period of ten years.<sup>1</sup> Congress recognized, however, that in areas served by cable, some exclusive contracts between vertically integrated vendors and cable operators may provide countervailing benefits to the development of competition among distributors.<sup>2</sup> Congress provided that where an exclusive contract is demonstrated to be in the public interest, it should be allowed. The Commission's position depends, therefore,

<sup>1</sup> See 47 U.S.C. §§ 548(c)(2), (4), and (5); 47 C.F.R. § 76.1002(c)(2), (4), and (5).

<sup>2</sup> See 47 U.S.C. § 548(c)(2), (4); 47 C.F.R. § 76.1002(c)(2), (4).

on whether the exclusive contract would be in the public interest, including whether it would have a procompetitive or anticompetitive effect on competition among video distributors. The Telecommunications Act of 1996 expanded the application of the program access provisions to common carriers<sup>3</sup> and open video system operators.<sup>4</sup>

Section 628 of the Communications Act prohibits unfair or discriminatory practices in the sale of satellite cable programming to multichannel video programming distributors.<sup>5</sup> Section 705 defines "satellite cable programming" as "video programming which is transmitted via satellite and which is primarily intended for the direct receipt by cable operators for their retransmission to cable subscribers."<sup>6</sup> We have interpreted the statutory program access provisions to apply only to satellite-delivered programming, although, in the open video system context, we have stated that "we do not foreclose a challenge under Section 628(b) to conduct that involves moving satellite delivered programming to terrestrial distribution in order to evade application of the program access rules and having to deal with competing [multichannel video programming distributors]."<sup>7</sup> We have not yet been presented with a situation where a cable operator otherwise subject to Section 628 has moved previously satellite-delivered programming off of the satellite to terrestrial delivery for the purpose of evading the ambit of the program access provisions. In the Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming ("Third Annual Report"),<sup>8</sup> several commenters urged the Commission to expand the application of the program access rules to include all programming—regardless of the method of distribution. In its Third Annual Report, the Commission stated that although we have seen no evidence that such conduct has actually occurred, if it were to occur, we would have to consider an appropriate response to ensure continued access to programming. The Commission intends to continue to monitor patterns and practices in the industry, but is not prepared currently to make a recommendation regarding revision of the statute.

*Question.* The Commission recently decided the allocation and assignment process for digital television. What impact will the Commission's decision have on Low Power TV stations located in channels 60–69? Will any of these stations lose their channel assignments?

*Answer.* In the Sixth Report and Order in the DTV proceeding, we stated that the principal impact on low power operations, LPTV and TV translators, will be from the accommodation of all full service broadcasters with a second channel for DTV. We further stated that the potential benefits of recovering channels 60–69 for other uses, such as to meet the urgent needs of public safety, outweigh any additional impact this plan may have on low power operations. Nevertheless, we recognized the benefits that low power operations provide to the public and adopted a number of measures in the Sixth Report and Order to mitigate the impact of DTV allotments and our spectrum recovery efforts on these low power operations. These measures included allowing displaced low power licensees to apply for replacement channels without being subject to competing applications, and changing several technical rules to provide low power stations with additional operating flexibility and increase the use of existing TV channels by low power operations. We also indicated that LPTV operations can remain on channels 60–69 provided that they do not cause interference to primary operations. We estimated that these changes will preserve many existing low power operations and will open many new channels for those low power stations that may be displaced on their existing channels. We also indicated that we would address the issue of compensation for low power stations in our forthcoming Notice of Proposed Rule Making on reallocation of channels 60–69. Finally, we stated that we intend to consider in another future rule making whether to create a new class of low power television broadcast stations that would modify the secondary status of these stations and provide them some level of protection.

In summary, the Commission's DTV allocation and assignment decision will have an impact on LPTV stations located in channels 60–69. As secondary operations, a number of low power stations may lose their channel assignments and may have to switch channels or cease operating if they cause interference to a primary user

<sup>3</sup> 47 U.S.C. § 548(j).

<sup>4</sup> 47 U.S.C. § 573(c)(1)(A).

<sup>5</sup> 47 U.S.C. § 548(b); 47 C.F.R. § 76.1001.

<sup>6</sup> 47 U.S.C. § 605(d)(1); see also 47 C.F.R. § 76.1000(h).

<sup>7</sup> In re Implementation of Section 302 of the Telecommunications Act of 1996—Open Video Systems, Second Report and Order, 11 FCC Rcd 18223, ¶ 103, n.451 (1996).

<sup>8</sup> FCC 96–496, FCC Rcd—, adopted December 26, 1996; summarized, 62 Fed. Reg. 5627 (Feb. 6, 1997).

of the spectrum. However, as indicated above, we are taking a number of significant steps to minimize the impact to these stations.

While we do not have figures for how many stations are actually in operation, there are 1,244 low power stations currently licensed by the Commission on channels 60–69. Our data base identifies 474 as LPTV stations and 770 as TV translator stations.

*Question.* Section 254(g) of the Telecommunications Act requires that interexchange services be priced using a rate integrated pricing structure. Has the Commission ruled in any case that any carrier, class of carrier, service, or type of service is not subject to the requirement that a rate integrated pricing structure be used?

*Answer.* Section 254(g) applies to “providers of interexchange telecommunications services” with respect to the geographic rate averaging requirements of that section, and to “provider[s] of interstate interexchange services” with respect to rate integration requirements. As determined by the Commission in the Rate Averaging and Rate Integration Order (paras. 9, 52), Section 254(g) applies to all providers of interexchange telecommunications services and to all interexchange telecommunications services. In the pending reconsideration proceeding of the Rate Averaging and Rate Integration Order, the Commission has been asked to consider the extent to which Section 254(g) does not apply, or the extent to which the Commission should forbear from applying, that section to some wireless services, such as mobile satellite service. At this time, the Commission has not determined that any carrier, class of carrier, service, or type of service is not subject to the rate integration requirements of Section 254(g).

*Question.* Section 254(g) was intended to codify and clarify the Commission’s “rate integration” policy which requires that the rate structure employed in the contiguous United States also be employed in setting rates for Hawaii and Alaska. Can such a carrier select a different rate structure for service to Hawaii or Alaska than other points in the Mainland?

*Answer.* Section 254(g) of the Communications Act codified the Commission’s pre-existing rate integration policy. As stated by the Commission in the Rate Averaging and Rate Integration Order (para. 67) released last summer implementing Section 254(g), carriers must use the same ratemaking methodology and rate structure in offering service to subscribers in states and territories outside the continental United States as employed by the carrier in offering services to subscribers in the continental United States.

*Question.* The Commission’s October 1996 Detariffing Order required interexchange carriers to stop filing rate information (i.e., tariffs) at the Commission. Without such information, it becomes very difficult to enforce Section 254(g). How does the Commission intend to ensure that consumers have adequate rate and service information in order to properly enforce Section 254(g)’s geographic averaging and rate integration policies? Specifically, shouldn’t carriers be required to provide the same amount of rate and service information that was provided in tariffs?

*Answer.* In the October 1996 Detariffing Order, the Commission adopted mechanisms to ensure effective enforcement of Section 254(g)’s geographic rate averaging and rate integration requirements in the absence of tariffs. The Commission required nondominant interexchange carriers to file an annual certification stating that the carrier is in compliance with the requirements of Section 254(g). The Commission further required nondominant interexchange carriers to maintain supporting documentation on the rates, terms, and conditions of their interstate, domestic, interexchange services that they could submit to the Commission upon request. Finally, the Commission required these carriers to make publicly available rate and service information. Several parties have filed petitions asking the Commission to reconsider or clarify various aspects of these enforcement mechanisms. The Commission is currently considering these petitions and examining the mechanisms that are necessary to enforce geographic rate averaging and rate integration in a detariffed environment. The Commission will continue to ensure that effective enforcement mechanisms are in place to achieve fully the goals of Section 254(g).

#### QUESTIONS SUBMITTED BY SENATOR FRANK R. LAUTENBERG

##### MANDATED PSA TIME TO ENCOURAGE RESPONSE TO THE CENSUS

*Question.* Particularly in light of the recent grant of digital television spectrum to broadcasters, will the FCC consider imposing a requirement that broadcasters provide PSA time to encourage citizens to return their census forms in 2000?

*Answer.* The Commission will soon issue a notice on the public interest. The Commission will consider a variety of proposals on ways that broadcasters might satisfy

their public interest obligations, and provision of public service announcements will be included in that discussion.

#### UNIVERSAL SERVICE

*Question.* On most any basis (including the existing mechanisms), New Jersey will be a net payor of funds to support universal service. The export of monies from New Jersey for federal programs is a serious concern of mine. New Jersey gets back only \$0.68 of every dollar it sends to the federal government, 49th out of the 50 states. A small fund targeted to high cost areas with a real need will mitigate the adverse impact on New Jersey.

Is it the FCC's intention to maintain an amount for supporting high cost areas comparable to today's mechanisms, which provide approximately \$1.5 billion in support. If not, will the FCC's decision on high cost areas increase the amount of support, and, if so, will New Jersey be required to pay more than it does today. How much more? And finally, would that increase disproportionately affect donor states like New Jersey?

*Answer.* In analyzing the amount of universal support a carrier would receive for high-cost areas such as New Jersey, the Joint Board recommended that the Commission use a forward-looking cost model to calculate the forward-looking costs of providing these supported services. While it did not recommend a specific model, the Joint Board did state that the Commission and the state commissions should work together to choose a model by the statutory deadline. The Joint Board recommended that, beginning on January 1, 1998, universal service support for large, non-rural carriers should be based on the cost of service as determined by a proxy model.

On March 26, 1997, the state members of the Joint Board submitted a report to the Commission regarding the cost models. In the report, the state members stated that they have serious concerns about the adequacy and accuracy of the cost models at this point. Nonetheless, the state members recommended that the Commission select one model as soon as possible to focus the efforts of the Commission and industry. The state members, however, did not make a recommendation on which model the Commission should select.

We remain committed to using a forward-looking cost methodology to determine universal service support. However, we are also concerned about which model provides the most workable, reliable mechanism that could be used to calculate universal service support for large, non-rural carriers. As recommended by the Joint Board, we will take specific steps to adopt a forward-looking economic cost methodology for determining support in high cost areas. First, by the end of June 1997, the Commission will issue a further Notice of Proposed Rulemaking seeking additional information to help the Commission select a forward-looking universal service support mechanism for non-rural carriers. By August 15, 1997, the states will notify the Commission of their intent to either develop their own forward-looking economic cost study or use the one developed by the Commission. By February 6, 1998, states must file their forward-looking economic cost studies with the Commission. The Commission will place the state-filed forward-looking economic cost studies on public notice and review them to ensure consistency with the federal plan. The mechanism for determining high cost universal service support, based on forward-looking economic cost, will become effective on January 1, 1999.

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#### QUESTIONS SUBMITTED BY SENATOR CONRAD BURNS

*Question.* What are your staffing needs over the next five years? Over time, as competition replaces regulation, I would think that staffing needs at the FCC would decrease dramatically. Would you agree?

*Answer.* The Commission's fiscal year 1998 Budget Estimates propose a ceiling of 2,155 FTE's, 100 fewer FTE's than in fiscal year 1997. In fiscal year 1999 the Commission will propose a ceiling of 2,105 FTE's, 50 fewer than in fiscal year 1998. These staff reductions will be accomplished by attrition and a decrease in the number of employees initially hired on term appointments, as those appointments expire. Because of the ongoing nature of implementing the Telecommunications Act and the need for enforcement of our new rules, we cannot predict at this time what the Commission's staffing needs will be in the year 2002. However, our activities are focused on ensuring that a thriving, competitive telecommunications market place is created and sustained.

*Question.* Tell me how many senior executive positions that the FCC had when Chairman Hundt took office? How many does it have now? What are these people doing? Based on what they're doing now, how many of them do you estimate you will need five years from now?

Answer. When Chairman Hundt took office in November 1993, the Commission had 46 authorized Senior Executive Service (SES) positions. Currently, the Office of Personnel Management (OPM) has authorized 50 SES positions to the agency, plus 1 temporary SES slot. Most of the Commission's senior management and policy-making positions, including the General Counsel and Common Carrier Bureau Chief, are SES, as are many of the Commission's Division Chiefs, such as the Chief of the Litigation Division. The Commission does not determine its SES allocation. Instead, OPM makes a biennial allocation to us as well as to other agencies. We have already indicated to OPM that we will accept continuation of our current allocation of 50 SES positions for fiscal years 1998 and 1999. At this point in time, it is difficult to predict what our needs will be in the year 2002 and beyond.

*Question.* As I understand it, there's not only an Office of Public Affairs, but there are also press contacts in each bureau and office. Similarly, although you have a large Managing Director's office, each bureau and office has its own administrative staff with typically 7 to 8 people. And finally, the FCC has hired a lot of economists and each bureau has economists; the Office of Plans and Policy has economists and you've created a whole Competition Division with economists. Why are all these folks necessary? How many will be needed in five years and why?

Answer.

#### *Office of Public Affairs*

The Office of Public Affairs (OPA) currently has a staff of 61. In addition, there are two Bureau media liaisons employed by the Common Carrier (1) and Cable Services Bureaus (1). The Wireless Bureau also has a media liaison, who is on detail from OPA and included within the 61. For purpose of comparison, in December 1995, OPA had 65 staff members in addition to 3 Bureau media liaisons.

During the last year, OPA has experienced a significant increase in its workload. This is illustrated by the increased number of inquiries from the media and the general public. OPA has received and responded to more than 500,000 public inquiries; answered more than 25,000 inquiries from the media; issued 595 press releases; distributed more than 400,000 forms to the public; and responded to 65,000 requests for reference materials. OPA staff created the FCC's Internet Home Page and are responsible for updating and maintaining the system. There have been 21,000,000 visits to the Home Page.

OPA traditionally was responsible for news media coordination functions and had 15 employees, while a larger consumer information, public outreach, reference, FCC library, and audio/visual staff of 50 employees within the Office of Managing Director handled those functions. In November 1994, in conjunction with a comprehensive organizational reform of the FCC, the consumer, reference, public outreach and audio/visual sections, and the 50 employees who made up these functions, were merged with the 15 prior OPA employees to create one consolidated office.

The three Bureau media liaisons are necessary in light of the increasing number of inquiries as well as the technical nature of the questions. For example, the Cable Services Bureau contact is able to focus solely on cable issues and provide better service to the community as a whole. The Bureau liaisons typically perform a wide variety of tasks, which include providing information for the Bureau's Internet home page and organizing open forums and other industry discussion events. In the past, these functions were typically handled by someone with the title "Special Assistant to the Bureau Chief." Assigning an individual with experience in working with the news media and the public to these posts has enabled the FCC to better work with the media and the public through such events as open forums and industry round tables.

In five years, the size of OPA will depend to a large extent on the ability of the agency to better utilize technology. For example, at present the FCC is developing a system that will permit electronic filing of comments. Increased electronic access to comments could simplify the workload now carried by OPA's Reference Operations Division. The overall size of the news media staff and necessity for Bureau liaisons will depend on the functions of each area and issues before the agency. For example, the Cable Services Bureau may no longer need a dedicated liaison within a relatively short period of time, whereas spectrum auctions may necessitate the continued presence of a liaison for the Wireless Bureau.

#### *Office of Managing Director*

As of March 1997, the Commission's Bureaus and Offices had the following administrative staffing levels: Cable Services Bureau (7 FTE's), Compliance and Information (9 FTE's), Common Carrier Bureau (10 FTE's), Mass Media Bureau (6 FTE's), Wireless Telecommunications Bureau (8 FTE's), and Office of Engineering and Technology (3 FTE's). Administrative staff employed by the Commission's Bu-

reaus and Offices are principally responsible for assisting Bureau and Office Chiefs, as well as the Managing Director, with Bureau-specific budgeting, planning, staffing, and management activities. While it is not possible to estimate the Commission's administrative staffing level in 2002, the size of the Office of Managing Director as a percentage of the agency has been reduced from 16 percent to 9 percent during the past two fiscal years, consistent with Commission-wide streamlining efforts. We intend to continue efforts to streamline the Commission's operations in coming fiscal years and anticipate additional productivity gains.

#### *Economists*

Economists currently employed in the Commission's Office of Plans and Policy (OPP), Competition Division, and other Bureaus and Offices, are critical to the Commission's efforts to implement the Telecommunications Act in the most pro-competitive manner possible. Successful implementation of the Act demands economic analysis of a multitude of issues. For example, in the recent universal service and access reform proceedings, economists performed a number of critical tasks, including providing economic analysis of the benefits to consumers that would result from various options before the Commission; evaluating the proxy models presented to the Commission; and analyzing the disparate economic effects that various changes to our price cap regime would have on various carriers. Commission economists helped to review 160,000 pages of comments by parties in the interconnection, access reform and universal service proceedings alone. Significantly, while Telecommunications Act implementation has required us to increase FTE's devoted to policy and rule-making activities by 50 percent since fiscal year 1995, filings received for review in docketed proceedings have increased by 227 percent during the same period. For the foreseeable future, economists will remain central to the Commission's efforts to carry out a deregulatory national policy of competition in all communications markets.

*Question.* As I understand it, the General Counsel's office has grown by over one-third from 70 to over 100 since you assumed office. What are all the extra folks doing?

*Answer.* The Office of General Counsel (OGC) serves as the chief legal advisor to the Commission and its various Bureaus and Offices. It also represents the Commission in litigation in federal courts. The percentage of cases won by the FCC before the U.S. Court of Appeals has increased dramatically. Three and a half years ago the FCC was winning just under 60 percent of these cases. Today we are winning over 80 percent. This record of success results in cost savings for industry which faces added certainty in interpreting Commission rules.

OGC has three divisions—the Administrative Law Division, the Litigation Division and the Competition Division.

The Administrative Law Division provides the Commissioners and the agency's Bureaus and Offices with legal advice on a broad range of communications and general administrative law issues. The Division also provides the public with legal information on such matters. The Division reviews all draft Commission decisions for legal sufficiency, with a particular emphasis on administrative law and statutory interpretation issues. Division staff provide legal advice to the Commission concerning a wide array of statutes, regulations, and procedures, including, for example, the Communications Act of 1934, as amended by the Telecommunications Act of 1996, the Administrative Procedure Act, the Freedom of Information Act, the Privacy Act, the Regulatory Flexibility Act, the Paperwork Reduction Act of 1995, the Government in the Sunshine Act, the Contract with America Advancement Act of 1996, the Federal Advisory Committee Act, negotiated rulemaking and alternative dispute resolution, the Commission's procedural rules, procurement issues and the agency's ex parte and ethics rules. The Division also drafts all Commission decisions involving matters on review from Administrative Law Judges, Freedom of Information Act applications for review, and regulatory and filing fee applications for review.

The Litigation Division represents the Commission in federal courts of appeals when parties challenge Commission actions, and, in conjunction with the United States Department of Justice and United States Attorneys offices, represents the Commission in litigation in Federal district courts. In addition, Litigation Division attorneys work with the Solicitor General of the United States in representing the Commission in actions in the United States Supreme Court.

The attorneys and economists of the Competition Division work to ensure a sustained focus on, and a rigorous and consistent analysis of, competitive issues throughout the Commission. Competition Division staff team with Bureau staff in the production of draft Commission decisions and reports to Congress that assess the competitive status of various telecommunications markets. The Division reviews draft Commission decisions for consistent competitive analysis, particularly in light

of the Telecommunications Act of 1996. The Division is also responsible for implementing provisions in the 1996 Telecommunications Act regarding utility holding company entry into telecommunications markets.

The recent increase in OGC's staff is largely attributable to two developments—the increased workload resulting from enactment of the 1996 Telecommunications Act and transfer of the Competition Division to OGC from the Cable Services Bureau.

The 1996 Telecommunications Act required the agency to conduct dozens of rulemaking proceedings, many of which are still pending. It has also served as a spur to additional rulemaking proceedings consistent with the deregulatory and pro-competitive purposes of the Act. The 1996 Act also provided for a wide variety of new kinds of proceedings to be initiated at the FCC by outside parties—for example, petitions for preemption of state and local barriers to entry under section 253 of the Act and petitions by Bell Operating Companies for entrance into the long-distance market pursuant to section 271. These additional burdens have required additional resources in OGC to help ensure that Commission orders interpret the 1996 Act in a consistent and legally correct manner.

Apart from the sheer increase in the volume of the work, enactment of the 1996 Telecommunications Act has shifted the emphasis of much of the agency's legal work from applying broad public interest provisions to interpreting detailed and complex statutory provisions. This has created an increased need for the kind of high quality and experienced lawyers that have been added to the Administrative Law Division. Our experience is that devoting the resources at the drafting stage to ensuring a high quality and sophisticated legal product increases substantially the likelihood of success on appeal, to the ultimate benefit not only of the FCC, but of the industries we regulate and the public.

Enactment of the 1996 Telecommunications Act and the implementing rulemakings and other proceedings are also leading to an increase in litigation against the agency. As the agency issues one after another important order for the future of the telecommunications industries, there are almost always several entities with the incentives and resources to mount a sophisticated and aggressive legal attack in court. If current trends continue, for example, there will be a more than 25 percent increase in the number of appeals filed against the FCC in fiscal year 1998 than in fiscal year 1997. We have added high quality, experienced lawyers to our Litigation Division to ensure that the agency can effectively defend itself in these appeals.

I should note that, to some extent, these developments regarding increased responsibilities relating to statutory interpretation and implementation, as well as related litigation, are a continuation of trends that began with the 1992 Cable Act, as well as the 1993 Omnibus Budget Reconciliation Act. Implementation of these statutory provisions regarding cable television regulation, auctions, mobile radio services and regulatory fees substantially increased the FCC's workload.

Finally, with respect to the Competition Division, the transfer of that Division to OGC has enabled it, in response to past criticisms of the FCC from courts and commentators, to focus much more broadly on ensuring that the FCC provides sophisticated and consistent competition analysis across all of its substantive responsibilities. The competitive analysis expertise of the Competition Division has enabled us to defend successfully several controversial and legally complex orders involving competition issues. Moreover, the Competition Division has served as a forceful voice within the Commission for pursuing in a far-reaching and consistent manner the overarching pro-competitive and deregulatory goals of the 1996 Telecommunications Act.

The increase in OGC resources has brought tangible benefits to the FCC and the public. In the last few years, the FCC's success rate in the courts of appeals has increased substantially.

*Question.* How big was the Wireless Bureau Front Office when it started? How big is it now? Why does Wireless need over 20 folks in the Front Office alone?

*Answer.* In December 1994, the Wireless Telecommunications Bureau's Front Office originated with 13 personnel (plus one vacancy). The Bureau's total personnel ceiling was 307.5. As of today, the Wireless Bureau Front Office consists of 16 personnel, while the Bureau ceiling now is 340.5.

The Wireless Telecommunications Bureau recently completed a reorganization of its structure, to enable it to better manage the significant changes in its assigned responsibilities resulting from new legislative, technological developments, and shifts in the wireless telecommunications industry and marketplace. This reorganization is designed to improve the Bureau's efficiency and provide for a better alignment of division-level activities to industry and consumer services and functions. In establishing these new division responsibilities, the reorganization plan nominally resulted in a Front Office structure with a ceiling of more than 20 staff.

Dan Phythyon, who recently became the Wireless Bureau Chief, is in the process of implementing the final steps of this reorganization, and is completing his own review of the Front Office staffing and structure. The purpose of this review is to ensure that the Wireless Bureau Front office remains no larger than necessary to perform its job in an efficient manner. We fully expect that the size of the Front Office will remain below 20 staff. Once the Bureau reorganization is finalized, there will be a public announcement of its new structure, including the composition of and responsibilities covered by its Front Office. We will provide the Subcommittee with additional information at that time.

*Question.* Chairman Hundt, the purpose of the Telecommunications Act, we thought, was to promote wide-spread competition in the various sectors of the telecommunications industry. We were led to believe that different entities would build networks and provide bandwidth so that consumers would enjoy the fruits of the information age. As I understand it, your policy will lead to many different entities reselling the same network or service, but that's not the same as building out networks or increasing bandwidth. How would you respond to that?

*Answer.* As we stated in the Interconnection First Report and Order, the Telecommunications Act of 1996 contemplates three paths of entry into the local market: the construction of new networks, the use of unbundled network elements of the incumbent's network, and resale of the incumbent's services. We anticipated that competitive carriers would use a variety of methods to enter the local telephone market, and that some carriers might first enter the market through resale, and gradually offer unique services through the use of their own facilities, the incumbent's unbundled network elements, or a combination of the two. In its Joint Explanatory Statement at 148, Congress recognized that "it is unlikely that competitors will have a fully redundant network in place when they initially offer local service, because the investment necessary is so significant." The Telecommunications Act of 1996 was intended to eliminate statutory and regulatory barriers and economic impediments that retard efficient entry into the telecommunications marketplace. The interconnection provisions of the 1996 Act did not express a preference for any particular entry strategy. The Commission's rules are designed to permit efficient competitive entry through a variety of methods consistent with the 1996 Act. We are in the early stages of what we expect will be a thriving competitive market, in which consumers can choose from among a variety of providers, services, and service packages. As with any burgeoning new market, we anticipate that there will be a significant amount of testing different product offerings and market entry strategies. It is too early to determine which services and entry methods will succeed. A review of the interconnection agreements that parties have reached, as well as discussions with industry participants, however, suggest that many competitive carriers intend to move from resale to use of their own facilities.

#### SUBCOMMITTEE RECESS

Senator GREGG. Well, thank you. I appreciate your time.

Mr. HUNDT. Thanks very much.

Senator GREGG. The subcommittee is recessed.

[Whereupon, at 10:31 a.m., Wednesday, April 16, the subcommittee was recessed, to reconvene subject to the call of the Chair.]

**DEPARTMENTS OF COMMERCE, JUSTICE, AND  
STATE, THE JUDICIARY, AND RELATED  
AGENCIES APPROPRIATIONS FOR FISCAL  
YEAR 1998**

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**THURSDAY, APRIL 17, 1997**

U.S. SENATE,  
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,  
*Washington, DC.*

The subcommittee met at 1:30 p.m., in room S-146, the Capitol,  
Hon. Judd Gregg (chairman) presiding.

Present: Senators Gregg and McConnell.

**THE JUDICIARY**

SUPREME COURT OF THE UNITED STATES

**STATEMENT OF HON. ANTHONY M. KENNEDY, ASSOCIATE JUSTICE**

**ACCOMPANIED BY:**

**HON. DAVID H. SOUTER, ASSOCIATE JUSTICE**

**JAMES C. DUFF, ADMINISTRATIVE ASSISTANT TO THE CHIEF JUSTICE**

**BILL SUTER, CLERK**

**DALE BOSLEY, MARSHAL**

**TONY DONNELLY, DIRECTOR OF BUDGET AND PERSONNEL**

**OPENING REMARKS**

Senator GREGG. OK, we'll get started. I know the Justices have hearings going on of their own. So they probably don't have too much time, but we do appreciate your coming by in this unique constitutional format. I have no opening statement, so we'll go right to your thoughts.

Justice KENNEDY. Thank you very much, Senator. Justice Souter and I are pleased to be here. And we have with us a number of court officers and court staff: our clerk, William Suter, our marshal, Dale Bosley, our budget and personnel officer Tony Donnelly.

And I wish to thank the members of your staff for their cooperation and the assistance they have given to ours. This is always an important way for me to learn more about the budgeting process.

Our budget this year, Senator, does ask for an increase of \$3.318 million. Part of that is buildings and grounds, which is presented by the Architect of the Capitol. When that is presented, we do endorse, of course, the Architect's suggestions.

That building of ours was built for under \$9 million, beginning in 1934. I think it was occupied in 1935. The estimate for upgrad-

ing the electricity and the plumbing—the innards of the building—is something like \$20 million. Maybe you can understand that. I can't quite understand that.

But that's what the Architect is studying, and that's what he's working toward, so in the next few years we are going to be asking for a very substantial appropriation for this building. But it has come to the point where very, very substantial facilities renovations are going to be necessary.

Part of the increase the Architect asked for this year is for studies for that. He also is going to recommend in the coming years, I think, additional installations to protect the perimeter of the building for security concerns.

Our own portion of the budget includes, again, an increase of \$2.121 million; \$1.5 million of this is for adjustment to base; and \$617,000 is for an increase in program. This is all security. The amount of \$217,000 is for six police positions, and \$400,000 is to enhance the police radio system.

There is a dedicated channel that the police think they should have on a new radio system. The one they have now does not work well.

The graphs in the court's budget submission show the work of the court remains constant, with some increase in unpaid petitions, which are generally criminal cases, and habeas cases filed by prisoners. The court is abreast of this work, and is well staffed, and, we think, very well managed by our administrative people.

#### PREPARED STATEMENT

And we appreciate, Senator, the opportunity to be here. We recognize that we are a very small part of the courts' budget, and the courts' budget is a very small part of the Federal budget. But we do think that this is important, for us to meet with you and to report to you on the condition of our institution. And I have no further statements by way of supplementing the written statement that we have given to you and your staff.

[The statement follows:]

#### PREPARED STATEMENT OF JUSTICE ANTHONY M. KENNEDY

Mr. Chairman and Members of the Committee, Justice Souter and I appreciate this opportunity to appear before your Committee to address the budget requirements and requests of the Supreme Court for the fiscal year 1998.

We have with us today James Duff, Administrative Assistant to the Chief Justice; Dale Bosley, Marshal of the Court; Bill Suter, Clerk of the Court; and Tony Donnelly, Director of Budget and Personnel.

As is customary, the Supreme Court's budget request is divided between the "Salaries and Expenses of the Court" and "Care of the Building and Grounds". For the "Care of the Building and Grounds" the total fiscal year 1998 budget request is \$3,997,000. Mr. Alan M. Hantman, Architect of the Capitol, will submit a separate statement to the Subcommittee regarding that portion of the total budget. I would like first to point out, however, that the proposed study of building improvements and utility systems upgrade is of particular importance in the Court's total budget request. Due to the age of the Court building, the Architect anticipates the need for substantial spending over several years to upgrade the electrical, plumbing and heating, ventilating and air-conditioning systems. We ask for your approval of this effort to modernize the building support systems. The Architect of the Capitol will address this matter in more detail.

With regard to the "Salaries and Expenses" portion of the Court's budget, our total fiscal year 1998 budget estimate is \$29,278,000. This is an increase of \$2,121,000, or 7.8 percent, over the budget authority for 1997. Most of the increase

represents base adjustments—that is, required increases in salary and benefits costs and inflationary increases in fixed costs. Specifically, \$1,269,000 of the adjustment represents required increases in salary and benefit costs. And \$235,000 is the amount requested for inflationary increases in fixed costs, allowing us to keep up with rising costs in all of our necessary operations.

Although we are requesting slightly more of an increase in our budget for 1998, (last year's budget request was for a 5.1 percent increase,) last year our request included only inflationary increases to the Court's budget base and nothing for new programs. As we mentioned in last year's request, we anticipated seeking additional funds in the 1998 budget for increased security. Based upon our initial review of our security needs, we are therefore seeking \$617,000 over base adjustments to fund two increases in the Court's security program. These are: the hiring of six additional Police Officers, and the installation of an enhanced Police radio system.

\$217,000 of this request is to fund the addition of six Police Officers in order to strengthen the Court's overall security. Our intent is to add two officers to each of the three Police shifts that provide exterior security for the Supreme Court over a full twenty four hour period seven days per week. The Marshal recommends that we augment security by adding manpower to each shift in order to create a stronger, full-time security presence at the Supreme Court building. The U.S. Secret Service has recently completed a review of the Court's overall security program, and they have indicated support for this strengthening of security. Subsequent budget requests may propose further increases and security improvements consistent with recommendations of the U.S. Secret Service and the study funded this fiscal year. Adding new positions will also reduce over-time now often required of officers.

\$400,000 of the request for security programs is a non-recurring increase to fund an evaluation of the remote communications needs of the Supreme Court Police and the purchase and installation of an enhanced Police radio system. The Court's Police radio system that is used to communicate with our Police Officers has become out of date and unreliable. We find that security is seriously compromised when communications between the Police Office and the Officers performing security details are delayed, unclear and unreliable.

We continue our efforts to make the most efficient use of the Court's existing resources and to minimize the need to request additional funding or personnel. During this Court Term, we will redevelop the Court's opinion writing system and all other personal computer applications to take advantage of the most up-to-date computer software technology. Implementing these changes and training Court users in the new software and applications will require substantial effort by the Court's Office of Data Systems. While we intend to accomplish these changes working within the existing budget base, we anticipate the need to increase the Court's budget over the next few years to enable the replacement of aging computer hardware and technology infrastructure such as the local area network, cabling and telecommunications. Also, we anticipate that modifications to software and updates to hardware will be necessary to accommodate changes to computer systems that must take place by the year 2000. Although it is not always easy to define specific savings that stem from spending on automation, we are confident that the Court's spending in this area and its attempt to make the most of emerging technology has increased the efficiency with which we address our caseload.

This concludes a brief summary of our request. We will be pleased to respond to any questions that the members of the Committee may have.

Justice KENNEDY. Perhaps Justice Souter has something to add.

Justice SOUTER. Thank you. But I don't think there are any untouched bases, and I will stick to carrying the bags until somebody has a question for me.

Senator GREGG. I have one question. The \$20 million for building renovation, do you expect that in next year's budget, or the year after?

Justice KENNEDY. I think in the next 3 years. The sum has not been requested here, but this is just a warning that we hear that kind of figure being brooded about for the structural installations which are necessary. Electricity, for instance, has to be completely redone.

## NINTH CIRCUIT SPLIT

Senator GREGG. There's been some proposals that we split the ninth circuit. In fact, on the floor of the Senate last year there was significant discussion about this. What are your thoughts on that?

Justice KENNEDY. I was on the ninth circuit from 1975 to 1987, and when I first came to the Senate for my confirmation hearing as a circuit judge, that question was being asked, because there was a report by a commission headed by Senator Hruska, Roman Hruska. And at that time I said I didn't know enough about it to make a judgment.

When I got on the court, I felt that it should not be split, that perhaps there was a place in the system for a very major circuit, and that there would be certain costs savings by having a very large circuit.

And so I was a defender of trying the experiment, and the experiment has now gone to the extent where we have 28 active judges. The ninth circuit has—oh, I would suppose 22 percent of the Nation's population and 22 percent of its judicial business.

I have increasing doubts and increasing reservations about the wisdom of retaining the ninth circuit in its historic size and with its historic jurisdiction. We have very dedicated judges on that circuit, very scholarly judges. They are working with tremendous expedition to dispose of the caseload. But I think institutionally, and from the collegial standpoint, that it is too large to have the discipline and control that's necessary for an effective circuit. I am willing to think further about it.

I had hoped that there would be a commission report so that we could study the commission report. But I understand that there is no commission authorized as of this time, and I think the Congress ought very seriously and at once to address this problem and make up—and come to some resolution one way or the other as to the size of the ninth circuit.

The Hruska report is good reading. Actually the division that it recommends makes considerable sense. One problem is the State of California has about 30 million people. That's as many people as were in the United States in 1860. It's a huge population. That's just the State of California.

So as you talk about splitting the ninth circuit, what are you going to do with the State of California? That probably requires, oh, 15 circuit judges. You would have a big circuit with just one State.

One answer, and that was the answer of the Hruska report, was to split California. And that requires a special mechanism in the event there is a split between the northern and the southern circuits which affects the State of California, and that that should be studied.

Senator GREGG. Thank you. Do you have any thoughts on that, Justice Souter?

Justice SOUTER. I really don't. Please don't split the first circuit, but the ninth—[Laughter.]

The ninth is not a subject of my expertise.

Senator GREGG. Well, we thank you for your time, and we won't take any more of it. We appreciate your submission, and we'll try to assist you with these facilities issues.

Justice KENNEDY. Thank you very much, Senator.

Justice SOUTER. Thank you.

Senator GREGG. We will take a brief recess. So we shall reconvene here.

[A brief recess was taken.]



U.S. COURTS

STATEMENT OF HON. JOHN G. HEYBURN II, CHAIRMAN, COMMITTEE  
ON THE BUDGET, JUDICIAL CONFERENCE OF THE UNITED  
STATES

REMARKS OF SENATOR MC CONNELL

Senator GREGG. We are joined by the Senator from Kentucky.

Senator McCONNELL. Mr. Chairman, I am just here to introduce to the committee a good friend of mine, of over one-quarter of century duration, who is a Federal district judge for the Western District of Kentucky, and who chairs the Budget Committee of the judiciary.

John's wife Martha who is an ophthalmologist, an outstanding physician. John has had a very distinguished career in the law. In my previous incarnation as the county executive of Jefferson County, John was one of the lawyers who represented me and my office in country government.

He's a Harvard graduate, and a graduate of the University of Kentucky College of Law, which is a lot more important in Kentucky.

And John is not only, as I said, a long time personal friend, but an extremely outstanding jurist. Periodically the lawyers in our State do their ratings, which they get to do anonymously, and John invariably has outstanding scores from those who come before him. So he performs his duties in an evenhanded and fair way.

I'd also like to ask that his biography appear in the record at this point.

Senator GREGG. Without objection.

[The information follows:]

BIOGRAPHICAL SKETCH OF JOHN GILPIN HEYBURN II

John Gilpin Heyburn II was born November 12, 1948, the son of Henry R. Heyburn and Frances Starks Heyburn. Both his grandfather and father were attorneys and civic leaders in Louisville, Kentucky.

Judge Heyburn received his early education in the Louisville public schools and graduated from Milton Academy, Milton, Massachusetts. In 1970 he received his A.B. degree from Harvard College, Cambridge, Massachusetts, where he majored in history, received seven varsity letters for participation in cross country and track and was named to the All-Ivy League cross country team.

Prior to entering law school, Judge Heyburn worked for a number of public service and research institutions, including the Park Duvalle Neighborhood Health Center, the Louisville and Jefferson County Youth Commission and the University of Louisville Urban Study Center. During that time Judge Heyburn also served as an officer in the United States Army Reserves. In 1976, Judge Heyburn received his J.D. degree from the University of Kentucky College of Law, where he was a member of the school's National Moot Court Team.

From 1976 until his appointment to the bench, Judge Heyburn was associated with the law firm of Brown, Todd and Heyburn, which at the time of his departure numbered approximately 120 attorneys. He was a partner at the firm from 1982 through 1992. Judge Heyburn's practice focused on commercial litigation, with a particular interest in construction contract litigation, a subject upon which he wrote

and spoke extensively. Judge Heyburn also served as special counsel to County Judge Executive Mitch McConnell and as counsel for two citizen commissions established to draft a new governmental charter for Louisville and Jefferson County.

Judge Heyburn served as a director of the Louisville Bar Foundation and as chairman of the continuing legal education programs for the 1991 Kentucky Bar Association Annual Convention. He also served as President of the University of Kentucky College of Law Alumni Association and as a member of the College of Law's Visiting Committee. As a director of Kentucky Citizens for Judicial Improvement, Judge Heyburn was active in the effort to reform Kentucky's judicial system by way of constitutional amendment in 1976.

Judge Heyburn was active in civil and political affairs in Kentucky. Among other things, he was Chair of the Jefferson County Republican Party, Chair of the 1988 Republican Kentucky State Convention, delegate to the 1984 and 1988 Republican National Conventions and a candidate for Jefferson County Judge Executive in 1989. In civic affairs, Judge Heyburn served as a director of numerous charitable and public service institutions and served as Chair of the Louisville and Jefferson County Crime Commission.

On March 20, 1992, President Bush nominated Judge Heyburn to the United States District Court for the Western District of Kentucky to succeed the Honorable Thomas A. Ballantine, Jr. His nomination was confirmed by the United States Senate on August 14, 1992, and he took the oath of office on August 28, 1992.

In 1994, Judge Heyburn was appointed to serve on the Budget Committee of the Judicial Conference of the United States. In January 1997, Judge Heyburn was appointed by Chief Justice Rehnquist to serve as Chairman of the Budget Committee.

Judge Heyburn is married to the former Martha Blackledge Keeney, who is an ophthalmologist and eye surgeon. They have two sons born in 1988 and 1991.

Senator MCCONNELL. I hope that the Senator from New Hampshire will not be too rough on my old friend, Judge Heyburn.

Senator GREGG. Thank you very much. We appreciate your coming by, Senator. And with that strong endorsement and introduction, Judge, we'll turn it over to you.

#### OPENING STATEMENT

Judge HEYBURN. Thank you very much, Mr. Chairman. If it is all right, I would like to make a brief statement in the beginning, in addition to the written statement that we are submitting.

It is a real honor for me to appear before your committee for the first time, and in doing so, to represent the many fine men and women of the Federal judiciary who do so much to assure equal justice to all of our law abiding citizens and swift punishment for those who do not abide by the laws.

Thank you, first of all, for the appropriation that we received last year. While we didn't get everything we asked for, we did get enough after fee collections and carryover, and, I believe, also with the aid of sound, conservative management of our resources, to adequately cover all of our essential services.

More important, I'm pleased to say that we've set our requests for fiscal year 1998 at a 7.8-percent increase over those estimated fiscal year 1997 obligated funds. And that's our lowest requested increase in 12 years.

We have accomplished this by carefully balancing the dual responsibilities that we have as an independent constitutional branch. That first responsibility is to perform our essential duties in law enforcement. And that second responsibility, which is equally important, is to spend the taxpayer's dollars wisely.

The first among the responsibilities that we have is that of law enforcement, and those responsibilities are continuing to increase. The Justice Department continues to bring to bear substantial new

crime fighting resources that tend to increase the workload that we have.

There are more people under supervision and under probation now than ever before. And that all contributes to an increase in our workload. Make no mistake about it: we are part of the justice system, and because of that, to fund law enforcement and prosecutors without giving the judiciary sufficient resources—if you did that—would only create a bottleneck that would really jam up the entire system. And none of us want that. And our request, I believe it's conservative, but it also recognizes that important reality.

Equally important in our view is our continuing judiciarywide effort to be more efficient. We recognize this as a responsibility, and the Budget Committee and our Economy Subcommittee are leading the effort to sensitize the judiciary to new budgetary constraints.

We are serious about it. We have worked hard at it. We recognize that our efforts are only beginning, but we believe they've already borne fruit, and I pledge to you to continue our effort to find efficiencies in every area that commonsense dictates.

I would be remiss if I didn't say that there's probably a limit to what we can do in terms of efficiencies without diminishing in some way a system of justice which, even with all its faults, is the most accessible and the fairest in the world.

Although we are a coequal branch within the constitutional government, the powers of the judiciary are circumscribed. But in a nation that's built on the rule of law, the limited powers we do have are essential to the stability of society.

I have no doubt, Mr. Chairman, that you appreciate and understand those relationships, and in my view that's all the more reason why the judiciary needs to receive whatever funds you believe are necessary to accomplish our role.

And we look at the budgetary process as a way that we can engage in a dialog with you to determine what those appropriate resources are.

One other thing I would like to mention just briefly, is the matter of judicial compensation. I always feel a little funny asking for money, particularly when it's for myself, in essence. And it would be a lot easier, I suppose, for me not to bring up the subject at all. But I bring up the subject without hesitation because I believe it's important. We don't become judges for the money. But it is important to have, in my view—and I can elaborate on this later if you would like me to—cost-of-living increases to maintain the stature and the excellence of the Federal judiciary.

I believe it's vital, and I'm putting in a word for that. It's not really a budgetary matter. The cost is minor. It is a fundamental matter of the continuing excellence of the Federal judiciary that's served us so well.

In closing I would like to make a couple of comments about two relatively small accounts in funding terms, but big in terms of what they do for the judiciary. And that's the Administrative Office of the Courts and the Federal Judicial Center.

The Federal Judicial Center's funding has remained about the same for the last 5 years, but it does a lot of work that's very vital for the judiciary. It's worked hard to enhance its record of alternatives to travel-based education, providing the kind of education

to our administrative staff and to judges in a less expensive way. And we believe it deserves additional funding.

And together with the Administrative Office, it has developed a number of new automation technologies, such as satellite communication and videoconferencing, which has enabled both of them to do their work in a better and more efficient way.

The Federal Judicial Center and the Administrative Office—the Administrative Office is the backbone of everything we do, and is critical to our efficiency and cost-savings efforts. They spearhead at a staff level all the efforts that we have been making. So appropriate funding for these agencies is essential.

#### PREPARED STATEMENTS

I would like to submit my own written testimony for the record, as well as that of Judge Zobel and Director Mecham. In addition, I submit on behalf of the U.S. Court of Appeals for the Federal Circuit the testimony of Chief Judge Glenn Archer, and on behalf of the U.S. Court of International Trade, both of which have their separate budget line items—I'm sure there is a historical reason for that, somewhere along the line—the statement of Judge Gregory Carmen for the International Trade Court.

And having said that, I'd be delighted to answer any questions that you might have.

[The statements follow:]

#### PREPARED STATEMENT OF HON. JOHN G. HEYBURN II

##### INTRODUCTION

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to testify today on the judiciary's fiscal year 1998 budget request. It is indeed a pleasure to appear before you for the first time as Chairman of the Judicial Conference Committee on the Budget. I look forward to working with you, the Members of the Subcommittee, and the staff and continuing the excellent working relationship that my predecessor Chief Judge Richard S. Arnold enjoyed with all of you.

With me today are Judge William G. Young of the United States District Court for the District of Massachusetts who is also a member of the Budget Committee and is Co-Chairman of our Economy Subcommittee, and Leonidas Ralph Mecham, Director of the Administrative Office of the United States Courts and member of the Judicial Conference Executive Committee.

On behalf of the entire Judiciary, I want to thank you, Mr. Chairman, Senator Hollings, and all the Members of the Subcommittee for your extraordinary efforts in providing the courts with our fiscal year 1997 appropriation. With the budget constraints under which you worked, we greatly appreciate your support for the judiciary. While you did not provide our full appropriations request, the funds available to the judiciary in 1997 (appropriations, normal fee collections, and carryover amounts) represent a 13.8 percent increase over 1996 obligations, allowing the courts to handle our known workload increases. Your willingness to work with us and provide this funding will ensure the effective functioning of the court system. I also want to recognize the committee staff for the excellent work they do and express my appreciation for their high level of professionalism.

##### OVERVIEW

I would like to make three key points in my presentation today, which I will highlight now, and elaborate on later. First, the judiciary performs an essential role in our society, especially in law enforcement. The judiciary is a key link in our system of justice and must have the resources to do its job so that law enforcement efforts are successful. Our streets are made safer when those accused of crimes have a fair and speedy hearing in our courts and, if found guilty, are appropriately sentenced. The judiciary also helps to assure the safety of our communities by supervising those accused prior to trial and those convicted upon their release from prison. Law

enforcement has been a high priority of the Congress and the citizens of this country. Since 1994 the Congress has increased funding for the U.S. Attorneys by 20 percent, the FBI by 30 percent, the DEA by 32 percent, and the INS by 101 percent, an average increase of 52 percent. All of the new investigators and prosecutors hired with these funds are creating additional work for the courts. This Committee has recognized the judiciary's law enforcement role in the past by providing the Judiciary with a 29 percent increase over the same time period. We ask that you continue to do so in fiscal year 1998 by providing the resources needed to handle our growing workload.

Second, the judiciary's workload continues to increase. Congress gives us more responsibility and more citizens ask the courts to resolve their disputes and problems. In fiscal year 1996, appeals, civil and criminal filings in U.S. district courts, and bankruptcy petitions all rose. Although there may be momentary fluctuations, we expect this growth to continue.

Third, while the judiciary cannot control its workload, it has made significant strides to work more efficiently, thus limiting the resources required to handle the increasing workload. Our report on Optimal Utilization of Judicial Resources, recently sent at your request, identifies numerous initiatives to enhance efficiency and productivity. These include an analysis of and reduction in space utilization, improved use of personnel resources including contracting when appropriate, effective use of automation, and technological innovations such as videoconferencing for training and some courtroom proceedings. These efforts and many more have allowed us to handle increasing workloads while exercising fiscal constraint.

#### RESTRAINED BUDGET REQUEST

In the face of increasing workloads, and recognizing the budget constraints of Congress, the judiciary is making every effort to minimize its budget request. Over the last several years the judiciary has worked to refine and improve its budget formulation and financial management processes. Also, under the leadership of our previous chairman, Chief Judge Richard S. Arnold, the judiciary has made great strides in becoming more efficient. This has allowed us to develop a fiscal year 1998 budget that grows by only 7.8 percent over fiscal year 1997 obligations. This results in the lowest appropriations increase requested by the judiciary in 12 years. By comparison, the Department of Justice, our primary litigant, continues to grow. For fiscal year 1998, the President is requesting an increase of between 7 percent and 13 percent for those Justice activities—U.S. Attorneys, FBI, DEA and INS—that affect the judiciary's workload.

The judiciary's 1998 appropriations request of \$3.6 billion includes only those funds necessary to continue our current workload (offset by efficiency and other savings), and to handle the additional responsibilities Congress has given us and the accompanying workload increase. We are requesting a 7.8 percent increase in overall spending in fiscal year 1998, which requires an 11.6 percent increase in appropriations. The 7.8 percent increase breaks down to 4.6 percent for current services (maintaining staffing, and funding for inflation, pay adjustments, and other costs related to existing workload), 2.8 percent to maintain a current level of service for uncontrollable workload increases, and .4 percent for our highest priority program needs. The latter two categories include: increases in juror days; confirmation of additional judicial officers; growing bankruptcy filings which require additional deputy clerks; increases in the number of individuals under supervised release which require additional pretrial and probation officers; and increases in the number of court security officers. We believe this is a very restrained request when compared with the resources provided to the Justice Department by Congress, and the uncontrollable workload increases created by Congress which we continue to face. A detailed explanation of our fiscal year 1998 request is included as an Appendix.

#### JUDICIARY'S ROLE IN SOCIETY

The judiciary performs a critical and unique role in our society. It is an independent and separate branch of government that touches the lives of all citizens. The judiciary serves this country and its people in a wide variety of ways.

Most citizens take their federal juror duty seriously. I have always been impressed that citizens are proud to serve and proud of the service and protection which our country's justice system provides them. In many instances it is the only personal contact that citizens have with their federal government. More importantly, it provides an opportunity for these individuals to be actively involved in the operation of their government. Almost 600,000 people a year enter our federal court-houses to participate in the jury process and to ensure the constitutional rights of individuals.

Most people never see and are probably unaware of the judiciary's law enforcement component that provides public safety throughout the nation's communities. Probation and pretrial services officers monitor the activities of individuals accused of crimes and awaiting trial or convicted of crimes and sentenced to terms of probation or supervised release. Criminals who have been incarcerated in federal prisons for years must now serve a term of supervised release upon their return to society. Probation officers monitor the activities of these convicted criminals, including drug testing and treatment, to make our streets safer and take action to return them to prison should they engage in forbidden activities. The number of individuals supervised by the judiciary (120,000) exceeds those people incarcerated in federal prison facilities (105,000). In fact, the judiciary is saving the federal government between \$31 and \$62 million annually by placing individuals in more cost effective monitored home confinement, rather than detaining them in prisons or jails.

Through our bankruptcy system, the judiciary plays a fundamental role in our economy. Bankruptcy courts provide a mechanism for debtors and creditors to resolve financial problems in a way that they can continue with their businesses and their lives. About \$30 billion in debt is discharged in our bankruptcy system annually. The projected bankruptcy filings of approximately 1.3 million in 1997 (a 43 percent increase over fiscal year 1995), equates to one bankruptcy for every 75 households in the United States. The timely resolution of these financial difficulties helps to keep this nation's economy running smoothly.

Two million victims of crime receive benefits each year from the Crime Victims Fund. Over the last four years the judiciary deposited over \$1 billion in criminal fines into the Fund.

#### JUDICIAL COMPENSATION

To be effective, the judiciary and its presiding judicial officers must be adequately compensated. The funding provided to the courts and the compensation given to judicial officers is a recognition of the value our society places upon the institution and the individuals responsible for carrying out justice in our nation. Unfortunately, federal judges salaries are falling behind the level of pay of other legal professionals, including most lawyers arguing cases before them. Federal judges have not received a pay adjustment since 1993 and increases in the cost of living have eroded their salaries. The judiciary is seeking an ECI salary adjustment for judges and staff comparable to that being recommended for general schedule employees for 1998.

Over the last four years, judges have been the only career federal employees who have not received an ECI salary adjustment. Further, judges are not eligible for the locality pay increases that other career employees receive. Therefore, the Judicial Conference submitted, and legislation was introduced to provide a catch-up ECI adjustment for the previous four years in which judges were denied an adjustment. If judges had received the annual ECI salary adjustments provided by statute and received by all other career employees, then compensation would be 9.6 percent higher than present. In real terms, relative to inflation, judges' compensation has been effectively reduced by 12.2 percent over the past four years.

#### UNCONTROLLABLE WORKLOAD

The judiciary is unique among other government entities. One of the ways in which we are unique is that we do not control our workload; it is determined by the Constitution and statutes. Among its many other responsibilities, the courts must: handle every case filed by the government, businesses, and individuals; supervise every defendant who is released pending prosecution; monitor every convicted criminal sentenced to a term of supervised release; pay jurors in every civil and criminal trial; and provide and compensate counsel for every financially eligible defendant. The workload is driven by the laws enacted by Congress, the citizens of our country who come to us to resolve their disputes and financial problems, and to a great extent the prosecutorial policies of, and resources provided to, the Department of Justice.

Over the years, our funding and staffing increases have not kept pace with workload increases. Case filings increased almost 67 percent from 1985 to 1995, but, just as important, so has the workload associated with the cases. For example, the proportion of more complex cases has grown, and the number of multi-defendant cases has increased. Also, imposition of Sentencing Guidelines has resulted in substantial workload not only on the courts, but also on probation officers and public defenders. All of these factors have resulted in increased workload above the absolute increase in cases. Staff and judge increases have not kept pace with this workload.

From 1985 to 1995 there has been a large growth in the probation and pretrial services area. The imposition of supervised release, tremendous growth in individ-

uals requiring drug treatment, and the use of labor intensive home confinement (which results in significant savings for prisons) all contribute to an ever-expanding workload.

#### CAPITAL CASES INCREASE DEFENDER SERVICES COSTS

The Defender Services account requires \$354 million to meet projected 1998 workload. As discussed in our recent report to Congress, the growth in this activity over the past two years is primarily attributed to an increase in the overall number of capital cases and in particular high profile capital trials that are very costly. The remaining activities in the account have not experienced any real growth other than inflationary increases. Justice Department decisions about whether and how to prosecute a case and what the charges will be, directly impact Defender Services resource requirements. Dramatic increases in workload and cost have been experienced in recent years, primarily attributable to the Justice Department's additional death penalty prosecutions and charging policies.

The judiciary is concerned about and recognizes the need to contain the cost of providing constitutionally mandated counsel to financially eligible defendants. Several initiatives are being pursued to control representation costs in ways that will not compromise the constitutional right of a defendant to a fair trial. These initiatives include improved case management techniques, attorney training, voucher review enhancements, and data collection and analysis improvements. Further, we are applying flat-fee concepts in a variety of contexts as part of our overall effort to manage habeas costs.

#### LEGISLATIVE INITIATIVES

The judiciary's workload is affected greatly by laws that have been and will be enacted. For example, the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104-131, 110 Stat. 1214) is expected to dramatically increase the number of victim restitution proceedings while imposing considerable financial accounting and tracking responsibilities on court clerks and probation officers. An intent of the Prison Litigation Reform Act (Public Law 104-134, 110 Stat. 1321) was to reduce the overall number of prisoner petitions. While this may ultimately occur, additional review of those that are filed is more complex, requiring substantial new administrative procedures. Increased judiciary expenses associated with special master appointments and administrative record keeping are also expected. Legislation proposed so far by the 105th Congress (such as juvenile crime control measures, victims rights constitutional amendment, property rights protections, and child support enforcement) is expected to continue this trend of creating additional cases and costly new administrative requirements for the federal courts.

A legislative initiative that the judiciary is seeking that would be beneficial to the judicial system is to classify as mandatory those activities of the judiciary that are constitutionally entitled and uncontrollable. Both the fees paid to jurors and compensation paid to court appointed counsel should be categorized as mandatory. The Constitution mandates the right to a trial by jury, both in criminal (Sixth Amendment) and in civil (Seventh Amendment) cases, and the daily rate is set by statute. The right to counsel in criminal prosecutions is also provided for in the Constitution (Sixth Amendment). The judiciary has no discretion in whether to provide these constitutional rights, so the funding to support them should not be discretionary.

#### WORKING MORE EFFICIENTLY

While the judiciary cannot control its workload, we are endeavoring to better manage how efficiently we process our workload and are proud of our accomplishments in this area.

#### STAFFING

The largest dollar savings come from doing more work with fewer people. As you know, the judiciary uses formulas to determine how many people should be devoted to doing the job. In recent years we have requested funding for only 84 percent of the people we believe are needed to run the judicial system as indicated by the formulas. This enabled us to achieve immediate economies and stimulate creative solutions to doing more work with fewer people. Each court determines how best to use its limited resources to accomplish its work. At the national level, we help the courts through systems development and other initiatives. One of these is the Methods Analysis Program, which identifies suggested business practices with the potential to result in more efficient and effective operations and to foster implementation of these practices in the courts. We are also able to handle our workload at 84 percent

of formula through the use of automation and technology in lieu of manual processes. It is because of our extensive economy and efficiency efforts that we are able to staff the courts at only 84 percent of the workload formula and still maintain the level of service that our system of justice deserves.

#### SPACE

Another resource that we have studied carefully is the utilization of space. As you know, because of increases in the number of judgeships and support staff over the past 15 years, and especially because of enhanced security requirements, the judiciary was severely short of adequate courthouse facilities. Congress responded to our needs and initiated an extensive, long term courthouse construction program. GSA is building, renovating and expanding court facilities nationwide which will provide the secure space we require. Unfortunately, for this subcommittee and our budget, this will result in a significant increase in our rental costs over the next three years and into the future.

To moderate this budgetary pressure, the judiciary undertook an extraordinary effort to identify ways to reduce rent costs. The bottom line is that we have succeeded in trimming our future rent costs by about \$12 million per year. Courthouses, unavoidably, remain a significant and growing cost of doing business. We are continuing to look for ways to achieve further savings. These efforts will enable us to control our future needs to some degree. However, it will be difficult to achieve significant additional savings.

#### AUTOMATION AND TECHNOLOGY

The use of automation and technology has been critical to allowing the judiciary to handle a continuously growing workload while staffing the courts at a level below that determined to be necessary by our workload formulas. This has allowed us to minimize overall spending increases while maintaining a high level of service to the public. For example, initiatives such as processing millions of bankruptcy notices through the Bankruptcy Noticing Center are producing significant savings. A follow-on initiative that may be considered is having bankruptcy docket information automatically updated to reflect notices distributed by the Bankruptcy Noticing Center.

Other automation initiatives which offer the potential for reduced cost and improvements in the quality of support for case processing are at very preliminary stages of development or being pilot tested. The judiciary currently is exploring a number of new major technology-based initiatives to improve communications, make information more accessible to the public and the judiciary, and improve courtroom proceedings. This includes the use of electronic filing, electronic courtroom technology, and the electronic dissemination of information as well as technologies to improve the quality and efficiency of courtroom proceedings.

In addition, the following automation initiatives which have been initiated or are being considered by the judiciary, are indicative of the emphasis being placed on improving the way the judiciary operates, and, where possible, reducing costs.

- Using numerous new approaches to the operations and maintenance of the automation program saving over \$10 million annually.
- Using and exploring the future potential of video and computer-based training as a means to conduct training more cost effectively.
- Exploring opportunities to realize savings and efficiencies by reducing the production and handling of paper documents through use of electronic case files.
- Experimenting with electronic filing to eliminate repetitive, time-consuming manual tasks involved in docketing.
- Using and exploring the future potential of electronic public access systems to save court staff resources in responding to public needs for information and to permit the public to gain direct, rapid, and easy access to official court records.
- Implementing about 100 automated systems to improve operating efficiency and effectiveness for routine, administrative-type tasks by automating manual business processes or updating outmoded systems and practices.
- Designing an electronic bankruptcy noticing system to transmit electronically bankruptcy notices to large creditors rather than through the more expensive printing and mailing system currently used.
- Exploring expanded use of Internet and Intranet technologies to distribute judiciary publications and other information at lower cost.
- Exploring opportunities to realize efficiencies through the use of document imaging, retrieval, and display technologies in the courtroom.
- Conducting experiments in process innovation to examine how courts can re-engineer business processes to make better use of automation and technology and identify efficiencies.

- Deploying and enhancing automated case management systems, which facilitates speedy resolution of pending cases by providing critical information needed to manage caseload.

#### VIDEOCONFERENCING

We know of your interest in videoconferencing and wanted to elaborate on some of the efforts we are pursuing. Videoconferencing can be used for the handling of routine and case-related administrative responsibilities, training, and courtroom proceedings.

The Prisoner Civil Rights Videoconferencing Project is being implemented in twenty-one district courts, which have qualified for participation. The district courts receive funding and program support to use videoconferencing in prisoner civil pre-trial proceedings. This project has the potential to result in personnel and travel cost savings in the federal courts, the federal Bureau of Prisons and state and local governments. Because prisoners are not being transported, it eliminates the associated security risks to judicial officers, court staff, other federal, state and local officials, and the public. For example, some pre-trial hearings in the *Unabomber* case were held by televideo in New Jersey while the defendant and his attorney remained in California.

Courts are also experimenting with the use of videoconferencing in other judicial proceedings. A few bankruptcy courts are using videoconferencing to conduct evidentiary and nonevidentiary proceedings between remote locations, reducing non-productive travel time, saving the judiciary, the bar, and the public travel costs, and allowing the more frequent and prompt scheduling of hearings in court locations without resident bankruptcy judges. On a very limited basis, one court of appeals circuit is experimenting with using videoconferencing to hear oral arguments where counsel or parties prefer not to travel to the main courthouse.

The judiciary has used videoconferencing for administrative meetings and is taking steps to use it for distance learning. The Administrative Office, the Federal Judicial Center and the courts are working together to install satellite capabilities to establish a permanent capability for supporting long distance training and conferences. In fiscal year 1996, a total of \$2 million was earmarked in the Judiciary Information Technology Fund to procure satellite downlinks at selected courts to initiate the program. As the cost of videoconferencing systems declines and systems become more widely available in the courts, usage should increase.

Because of the limited resources available to the judiciary to support videoconferencing, we have coordinated closely with other federal government entities and state and local governments to share the use of and, in some instances, the cost of videoconferencing.

#### ADMINISTRATIVE OFFICE STAFF CONTRIBUTIONS

I would be remiss if I did not point out the pivotal role of Administrative Office staff in these efficiency efforts in addition to all of their other extensive support of the courts and the Judicial Conference. The satellite downlink capability for videoconferencing and development of the staffing formulas which I previously mentioned, the efforts to utilize staff resources more efficiently, the extensive analysis of rental costs, the development of technology, and the report on Optimal Utilization of Judicial Resources, to name a few, were all spearheaded by Administrative Office staff. The courts cannot do this work on their own.

The Administrative Office also provides daily support to the courts and the Judicial Conference in a variety of other ways. Some of these are:

- Research and analyze hundreds of matters each year for consideration by Judicial Conference committees.
- Develop new ways for handling court business and provide training and assistance to judges and court employees to help them implement programs, improve operations, and manage the courts.
- Support the planning efforts of the Judicial Conference by conducting strategic studies and providing technical assistance, research, and analysis related to planning issues and topics.
- Provide centralized core administrative functions such as payroll, personnel, budget, and accounting services.
- Prepare manuals and a variety of other publications that include essential information regarding judicial business.

A \$5 million (6.6 percent) increase is requested for the Administrative Office in 1998, yet through the rental cost study alone, they have helped reduce rent costs by \$12 million in all future years. Small investments in AO staff produce significant overall savings. Unfortunately, while total judiciary FTE have increased by 13 per-

cent from 1995 to 1997, Administrative Office staffing has declined by three percent. Lower AO staffing has delayed efforts to provide some basic support services to the judiciary, such as uniform national automated accounting and financial systems and a replacement for the outdated Criminal Justice Act Payment system. It has also hindered their efforts in other areas, which could over time lead to a deterioration in support for our judicial system. The fiscal year 1998 request will simply allow the Administrative Office to begin to restore staffing back to the level authorized for fiscal year 1995.

#### FEDERAL JUDICIAL CENTER SUPPORT

I would also like to comment briefly on the Federal Judicial Center's importance and urge full funding of its request of \$18,425,000, a 5.3 percent increase over its current level. Even with this modest increase the FJC's funding remains about the same as it was 5 years ago.

Judges' work changes constantly due to new statutes, new appellate case law, new procedural rules, and developments in related fields, such as the impact of science on the kinds of evidence in litigation. We turn to the Center, be it for help on managing a capital case or a mass tort case, or to understand last April's prison litigation and habeas reform acts, or for techniques for more efficient juror selection. The Center teaches our probation and pretrial officers how to supervise defendants, efficiently and appropriately, before trial and after incarceration, as well as to help judges determine criminal sentences. The Center's management training programs teach court staff the tools used in the private sector to reduce costs, streamline operations, and better serve the public.

Over 80 percent of court participants in Center training programs attend training in their home cities. For in-court training, the Center provides the courts self-contained curriculum packages, on-line computer conferencing, videotapes, manuals, diskette, and CD-ROM's. It also plans eight satellite broadcasts this year.

#### LOOKING TO THE FUTURE

The judiciary is not only looking at ways to improve and work better now, but is continually planning for the future. In December 1995, the Judicial Conference adopted its first comprehensive Long Range Plan for the Federal Courts, which sets forth specific recommendations for conserving core values while preserving flexibility to respond to new challenges. There are numerous recommendations aimed at optimal use of judiciary financial, human, physical, and technological resources.

Other planning efforts include a strategic business plan for the judiciary produced in September 1996. This plan provides a foundation for more specific plans and planning processes. The Long Range Plan for Automation in the Federal Judiciary supports the Long Range Plan for the courts as well as the strategic business plan.

The judiciary's workload continues to grow. As workload grows, so does our need for additional personnel and related space. Together, personnel and rent represent most of the courts' operating budget. The efficiency efforts underway will help to offset these increases, but they cannot be relied upon exclusively to replace needed appropriations in the future. If our budget requests are not funded, staffing will have to be further reduced. Ultimately, this will affect our ability to provide the services required by the Constitution, expected by the Congress, and relied upon by the citizens.

#### CONCLUSION

Let me conclude by saying the judiciary performs a critical service for our society and affects the lives of all of its citizens. As an integral component of the war on crime, the judiciary must have the resources to process the cases generated by the ever increasing number of law enforcement officers and federal prosecutors.

We recognize the budget constraints you have and will continue to face. We want to work with you as we have done in the past to ensure that the judiciary receives adequate funding within those constraints. We have and will continue to use those resources wisely and efficiently.

I want to thank you for this opportunity to testify before you today and we are available to provide any additional information you may need.

## APPENDIX

## SUMMARY

The fiscal year 1998 budget request for the Courts of Appeals, District Courts and Other Judicial Services totals \$3,461,324,000, an increase of \$363,324,000 over our fiscal year 1997 appropriation level. However, to get a true picture of the financial requirements of the judiciary, it is important to point out that in addition to appropriated funds, the judiciary requires the use of other funding sources to supplement our appropriations. Included in these sources of funding are fee collections, carry-over of fee balances from a prior year, and the use of no-year funds. When all sources of funds are considered, the increase in obligations for fiscal year 1998 is only, \$266,254,000.

Of the \$266 million increase in obligations over 57 percent (\$153 million) is necessary to provide for inflation and other uncontrollable adjustments for existing judges and staff in order to continue current operations. The remaining 43 percent (\$113 million) is primarily needed to respond to increasing workload. The request for the principal programs are summarized below.

## SALARIES AND EXPENSES

The salaries and expenses of the circuit, district, and bankruptcy courts, and probation and pretrial services offices account for most of our request. A total of \$3,067,449,000 is required for this activity, \$212.2 million over fiscal year 1997 estimated obligations. Other sources of funding totaling \$225.6 million are expected to be available to offset the S&E requirements leaving an appropriation need of \$2,842,840,000. Included in these other sources of funding are \$74 million in funds expected to carry forward from fiscal year 1997; \$126.9 million in fee collections; \$22.2 million from the Violent Crime Reduction Trust Fund (VCRTF); and \$2.5 million from the Vaccine Injury Trust Fund.

Over 58 percent of the \$212 million increase (\$124 million) is needed to fund uncontrollable costs such as inflation and the annualized costs of additional personnel and space brought on in fiscal year 1997. The current services portion of the request also includes rent and related costs associated with new space that the General Services Administration (GSA) will deliver in fiscal year 1998. The total rent bill from GSA is estimated to be \$574 million for 1998, a 5.2 percent increase over fiscal year 1997, and a 175 percent increase over fiscal year 1988.

The remaining increase (\$88 million) will primarily fund the personnel needed to address increases in our uncontrollable workload, and modest enhancements in our automation program. The increases fund the following:

*Additional Court Support Personnel.*—Workload continues to increase in our district, appeals and bankruptcy courts. We anticipate that bankruptcy filings will increase over 20 percent and district and appellate filings will also increase. In probation, the number of offenders received for supervision will continue to increase, but more significant is the shift from relatively low-risk probation cases to high-risk violent offenders on supervised release. Consequently, an increase of \$47.9 million would fund 979 new court support employees and related expenses (exclusive of judges' staff) in appellate, district and bankruptcy courts and \$21 million for 349 new probation and pretrial services officers and supporting personnel.

It is important to note that even with these increases the courts will have to continue to operate with only 84 percent of the staff that should be on-board to meet projected workload as identified by our work measurement formulae. This is the same staffing level as is provided in fiscal year 1996 and fiscal year 1997.

*Judges.*—An increase of \$8.9 million is requested for 13 new magistrate judge positions and 50 support staff positions. This increase is needed to provide an effective, yet less costly, way of providing help for Article III judges to handle the large volume of civil and criminal cases facing the courts.

*Probation and Pretrial Services Programs.*—An increase of \$8.8 million is needed for the Drug-Dependent Offender Program. Of the requested increase, \$5.1 million will be used to place high-risk substance abusers in structured, in-patient programs. The remaining \$3.7 million is requested to implement the mandatory drug testing provision of the Violent Crime Control and Law Enforcement Act of 1994. An increase of \$1.3 million is requested for contract in-patient mental treatment necessary to supervise and properly control an additional 100 persons found incompetent to stand trial or not guilty by reason of insanity.

*Automation.*—The 1998 request includes enhancements in the area of automation which include fundamental improvements to the courts business processes of accounting and financial systems, personnel management, court appointed attorney payment processing, and library inventory management. These automation projects

will strengthen the judiciary's information management capabilities and enable more effective and efficient program management and resources. Overall, however, less funding will be required in fiscal year 1998 in the area of automation because of program reductions.

#### DEFENDER SERVICES

A total of \$354,482,000 is requested for the Defender Services program, which provides representation for indigent criminal defendants. Of this amount, \$329,529,000 is requested in direct appropriations and \$24,953,000 is requested as a reimbursement from the Violent Crime Reduction Trust Fund. The total requirements in fiscal year 1998 are \$21,284,000 over the fiscal year 1997 projected requirements of \$333,198,000.

Most of the increase (\$20,684,000) is needed for uncontrollable costs, such as pay and benefit cost adjustments, inflation and a projected increase in caseload. Included in these costs are funds for an additional 67 FTE to handle a projected caseload of 85,300 CJA representations. An increase from the anticipated fiscal year 1997 level of 84,400. Also included is a \$5 per in-court and out-of-court hour rate adjustment for private panel attorneys in those districts which do not currently receive a \$75 per hour compensation rate. Panel attorney rates in 77 of the 94 districts, while raised in 1996 for the first time since 1984, are still an impediment to our ability to attract qualified attorneys to serve as court-appointed counsel.

The remaining increase (\$600,000) would fund two new federal and community defender organizations. The Congress urged us to establish more defender organizations as an alternative to using panel attorneys in districts where this would be appropriate. With these funds, we would have defender organizations which serve 66 districts in fiscal year 1998, up from 64 districts in fiscal year 1997.

#### FEES AND EXPENSES OF JURORS AND COMMISSIONERS

For the Fees of Jurors program, a total of \$71,707,000 is required, \$3.3 million over fiscal year 1997 estimated obligations. This amount funds inflationary adjustments, and a projected increase in the number of juror days.

#### COURT SECURITY

For the Court Security program, a total of \$170,973,000 is required, \$29.5 million over fiscal year 1997 estimated obligations. The request provides funding for inflation, including costs associated with a wage labor rate increase for court security officers, and other uncontrollable costs (\$7 million).

The remaining increase of \$22.5 million would provide for additional court security officers, security equipment and administrative support to meet the courts' most urgent requirements for security coverage at new facilities coming on line in fiscal year 1998, and to bring security at existing facilities up to the minimal level deemed necessary by the Marshals Service.

#### VIOLENT CRIME REDUCTION TRUST FUND

The Violent Crime Control and Law Enforcement Act of 1994 (Crime Bill) created the Violent Crime Reduction Trust Fund. The amounts in the trust fund are to be appropriated to finance expenses authorized by the Crime Bill and the Antiterrorism and Effective Death Penalty Act of 1996. The judiciary was authorized \$50 million in fiscal year 1998 to help meet the increased demands for judicial activities in the federal courts. Of the amount authorized for the judiciary in the trust fund: (1) \$27.9 million provides funds to handle additional workload associated with the hiring of new Assistant U.S. Attorneys; (2) \$17.2 million will fund the Judiciary's workload increases in support of the Safety Valve, Three Strikes, Death Penalty, and Reimposition of Supervised Release provisions; and (3) \$4.9 million will fund Mandatory Drug Testing, Criminal Aliens and Immigration Enforcement, Changes in Federal Rules of Evidence, and Notification of Changes of Address provisions that impact on our workload and resources.

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#### PREPARED STATEMENT OF LEONIDAS RALPH MECHAM, DIRECTOR, ADMINISTRATIVE OFFICE OF THE U.S. COURTS

Mr. Chairman and Members of the Subcommittee, thank you for inviting me to testify on the Administrative Office's (AO) fiscal year 1998 budget request. Knowing the overall budget constraints under which you worked, the Subcommittee was very supportive and fair to the AO last year. I want to thank you, Chairman Gregg, and the Members of the Subcommittee for providing an increase in funding for fiscal

year 1997. The level of funding provided the AO in fiscal year 1997 is sufficient to halt the decline in staffing levels which we have been experiencing since 1995. The AO and the courts are partners in administering justice and we appreciate your recognition of our role. Thanks also to the Committee staff for their continued professionalism and cooperation. We look forward to working with you all during this budget cycle.

#### AO PLAYS A UNIQUE ROLE

The AO plays a unique role within the federal government. In his statement to this subcommittee, Judge John Heyburn, Chairman of the Committee on the Budget of the Judicial Conference, discusses the role of the judiciary in society and the fact that, in some way, the judiciary impacts the lives of all American citizens. Many citizens use the courts to resolve disputes, others benefit from interpretations made by the courts, many serve on juries, businesses and consumers settle debts in bankruptcy court, and safety for all is enhanced by pretrial services and probation officers who supervise individuals considered a safety risk to their community. Because the AO is actively involved in each of these court activities, the AO indirectly touches the lives of all citizens, exerting a much larger force than its budget and staff size would indicate.

The judicial branch is organized differently from the executive branch. Most executive agencies have several administrative layers, including departmental, bureau, district, and field offices. The Administrative Office provides administrative and operational support directly to the federal courts so they can focus on their primary mission of adjudicating cases. Unlike other federal entities the judiciary has one-stop shopping for all its administrative needs because the AO provides such a broad range of services to the courts. The AO handles not only centralized administrative functions like budgeting and accounting, but directly supports court activities, such as developing computer applications, designing financial and personnel systems, and providing training. This unique administrative structure creates economies of scale that individual courts could not achieve and gives one office insight into all court matters, so cross-cutting improvements are easier to generate. Therefore, funding for the AO enhances the efficiency of all the courts.

#### *Justice Department Administration Receives 60 percent More Proportionately than the AO*

If pressed to find a government entity somewhat comparable to the AO, I would point to the general administration accounts at the Department of Justice. Both play an important role in law enforcement. Both are responsible for supporting the nation's battle against crime. However, appropriations for the Department of Justice general administration accounts increased 17.8 percent between fiscal years 1995 and 1997, while AO appropriations increased by less than 5 percent. Between 1995 and 1997, staffing associated with management and administration at DOJ has increased from 6,554 FTE to 7,461 FTE. During that period total AO FTE declined from 953 FTE to 923 FTE. Viewed another way, the AO's share of the federal judiciary budget in fiscal year 1997 was 2.6 percent (including the reimbursables from the courts), compared to 4.3 percent for the general administration accounts in the Department of Justice. In spite of the similarity of their missions, the AO receives proportionately less resources to support the judiciary than the general administration accounts receive to support the Department of Justice.

You might ask, "How has this low funding level impacted on the AO's ability to adequately support the courts?" The primary area impacted by the hiring freeze is our ability to maintain an aggressive pace in improving our national financial systems. A cornerstone of our financial management process is decentralized decision making. We have an ambitious plan to pursue new initiatives and upgrade aging systems. Limited staffing has slowed our efforts to upgrade the CJA payment system, adopt national accounting and payroll systems and implement more efficient ways of administering court funding allotments.

#### *Chief Justice Rehnquist Stresses Value of the AO*

In his fiscal year 1996 annual report on the courts, Chief Justice Rehnquist discussed the important and unique role of the AO. He emphasized the AO's "central role in the judiciary's efforts to economize" and highlighted many AO accomplishments such as "analyzed program and operating costs, conducted studies and evaluations, and identified opportunities for improvement or savings." The Chief Justice expressed concern about the discrepancy in the growth rates of the AO's budget and the judiciary's budget. He noted that the AO's budget "has been growing at a much slower rate than the judiciary's as a whole." Despite a shrinking proportion of funds, the AO expanded its service to the judiciary in the last twenty years, but I am here

to tell you that we have probably reached the limit of what we can take on without additional staff.

#### AO FUNDING

The fiscal year 1998 funding request for the AO is modest. It allows for no new initiatives or programs. We are requesting total funding of \$90,712,000, a 6 percent increase over expected fiscal year 1997 obligations. This total includes all sources of funds—appropriations, the court reimbursable program, fiscal year 1998 fee collections, prior year carryover and independent counsel reimbursements.

The AO sincerely appreciates the 4 percent increase in appropriations provided for fiscal year 1997 after essentially level funding over the last four years. The funds are sufficient to provide a current services level of activity. However, the 1997 funding does not allow the AO to lift the limited hiring freeze it has been operating under since 1993. The result of the freeze is that fiscal year 1997 staffing will be the same as fiscal year 1996, but still well below the level authorized for fiscal year 1995.

About half of the increase requested for fiscal year 1998 is for pay and benefit cost adjustments. Nearly 90 percent of the AO budget funds personnel, so pay and benefit adjustments represent a significant cost for us. The other half of the requested increase is for an additional 23 FTE which would restore staffing and services to 1995 authorized levels. Restoration of the 1995 staffing levels is critical to the ability of the AO to provide necessary support to the whole judiciary. Without adequate staffing, the AO's efforts to improve the economy and efficiency of the judiciary will be delayed and in some cases halted.

#### AO ACHIEVEMENTS

##### *Support for Supervision of 120,000 Individuals*

The AO is proud of its service to the courts, especially its oversight and management support of the law enforcement functions of the judiciary. The AO is vitally involved in the work conducted by the nation's approximately 7,000 probation and pretrial services personnel. These people are on the front lines of the war on crime, monitoring the activities of 120,000 individuals, 15,000 more than are in federal penitentiaries. The AO manages a national contract for the home confinement program, a significant tool for monitoring those awaiting trial or convicted of crimes. Home confinement provides an alternative to more costly incarceration, saving the federal prisons between \$31 and \$62 million a year.

##### *Drug Testing—720,000 Specimens*

Another area in which the AO provides central program support at a reduced cost is drug testing of those under supervision. The AO oversees the national drug-testing contract for the analysis of over 720,000 urine specimens a year and is working with the Department of Justice on implementing a universal drug testing project in selected courts, which will allow the judiciary to detect and treat additional drug abusers.

The AO commissioned a study on non-instrumented drug testing devices (hand-held urine test kits) that will result in probation and pretrial services officers using the most proficient and cost beneficial urine test devices for detecting illicit drug use. In addition, the AO is also studying additional drug testing technology that will reduce testing expenditures without impacting the ability to detect drug use.

The court security program provides protection to the judges, the court staff, and visitors to the courts, with operational control by the U.S. Marshals Service and program oversight by the AO. This program involves about 2,600 court security officers and security equipment in over 400 facilities.

##### *Efficiencies from Decentralization*

A major initiative for the AO over the past few years is decentralizing budget, management and personnel functions to local managers. Decentralizing gives the courts increased flexibility to meet their individual needs in the most cost-effective way possible. To complement the decentralized budget and management system, the AO developed a decentralized personnel system for the courts that provides the courts the flexibility to allocate dollars for personnel needs rather than a set number of positions. Courts have the choice of hiring staff, hiring contractors, or automating their work. To further improve financial management, the AO is simplifying its system of allotting funds so that the number of categories of funding for the courts is reduced from 57 to 3.

### *Efficiency Through Automated Systems*

Because of this streamlining and decentralization, the AO places a high priority on program management and oversight. The AO conducts quarterly financial reviews, which allow us to provide the Congress with periodic updates of savings or program adjustments that affect our need for appropriations. The AO is also working with court financial and technical experts to determine the best software for the judiciary's financial and budgetary requirements. The goal is to implement a standardized, automated accounting system in the courts which will ensure more auditable, accurate, and timely financial reports. The AO is also acquiring a new personnel and payroll system that automates and integrates the personnel and payroll functions and enables data entry and retrieval at local court sites.

### *AO Staffs 24 Judicial Conference Committees*

A basic function of the AO is to provide support services to the policy making body that governs the judiciary, the Judicial Conference of the United States. The Judicial Conference has 24 committees that consider hundreds of issues each year with the help of subject matter experts on the AO staff. AO staff work with the committees on developing and implementing policies, developing long range planning, and coordinating economy and efficiency efforts.

### *AO Support for 2,000 Judges*

A key priority for the AO is support of Article III, bankruptcy and magistrate judges. The AO provides the judges with legal counsel, orientation and training programs, payroll and other human resources services, statistical reports, program management advice, and chambers and courtroom automation capabilities. Similarly, the AO assists court administrators through court management reviews and on-site technical visits to monitor compliance with guidelines and assess program effectiveness.

## APPLYING TECHNOLOGY IN THE COURTS

The AO has an excellent track record in assisting the courts with technological advances, helping them to absorb some of the growth in workload over the last several years when they were not provided 100 percent of the staffing authorized by our workload formulae. The AO has a Technology Enhancement Office devoted to identifying and analyzing court business problems and opportunities for service enhancements that might result from the innovative application of information technology.

### *Videoconferencing*

A major initiative of this office is to expand the use of videoconferencing in court proceedings. Between 1991 and 1994, the judiciary conducted pilot programs for videoconferencing certain civil hearings. Based on an evaluation of the pilot programs, the Judicial Conference endorsed videoconferencing as a viable case management tool in civil prisoner pretrial proceedings and authorized funding to expand videoconferencing to additional courts and to cost-share with state or federal prison authorities. Currently, 21 district courts have met the criteria to participate in the project and 7 district courts have implemented the use of videoconferencing.

In addition, the AO is working with the courts to establish what other types of proceedings are appropriate for videoconferencing. The AO and the FJC are also establishing a joint videoconferencing and long distance learning facility. Some AO training and seminars are already provided through videoconferencing and we are working to add more.

In various other ways, the AO is applying technology to the work of the courts. The AO spearheads automation initiatives which offer the potential for reduced cost and improvements in the quality of support for case processing. The AO is supporting a number of new major technology-based initiatives to improve communications, make information more accessible to the public and the judiciary, and improve courtroom proceedings. This includes the use of electronic filing, electronic courtroom technology, and the electronic dissemination of information as well as technologies to improve the quality and efficiency of courtroom proceedings.

### *AO Automation and Technology Initiatives*

As detailed in the November 1996 "Report to Congress on the Optimal Utilization of Judicial Resources" that was prepared at your request, the following automation initiatives are indicative of the support provided by the AO to improve the way the judiciary operates, and, where possible, reduce costs.

Implementing the Jury Modernization Project will assist courts in empaneling juries by creating jury wheels of eligible citizens, processing summons for prospective jurors, processing questionnaires, and paying jurors.

Exploring the use of mobile computing for probation and pretrial services officers so that they can spend more time out in the community and less time in the office.

Using and exploring the future potential of video and computer-based training as a means to conduct training more cost effectively.

Exploring opportunities to realize savings and efficiencies by reducing the production and handling of paper documents through use of electronic case files.

Experimenting with electronic filing to eliminate repetitive, time-consuming manual tasks involved in docketing.

Using and exploring the future potential of electronic public access systems to save court staff resources in responding to public needs for information and to permit the public to gain direct, rapid, and easy access to official court records.

Designing an electronic bankruptcy noticing system to transmit electronically bankruptcy notices to large creditors rather than through the more expensive printing and mailing system currently used.

Exploring expanded use of Internet and Intranet technologies to distribute judiciary publications and other information at lower cost.

Exploring opportunities to realize efficiencies through the use of document imaging, retrieval, and display technologies in the courtroom.

Deploying and enhancing automated case management systems, which facilitates speedy resolution of pending cases by providing critical information needed to manage caseload.

#### AO SUPPORT OF ECONOMY AND EFFICIENCY EFFORTS

The judiciary is committed to improving the overall fiscal responsibility, accountability, and efficiency of its operations. The Economy Subcommittee of the Judicial Conference's Budget Committee coordinates the efforts of the various program committees of the conference in developing and implementing economy and efficiency initiatives. The Economy Subcommittee receives staff support from throughout the AO and together they perform a function within the judiciary similar to the Office of Management and Budget's role in the Executive Branch. The impact of this team effort is showcased in the "Report to Congress on the Optimal Utilization of Judicial Resources." The Economy Subcommittee and the AO not only spearheaded the production of the report, but were responsible for many of the efficiencies it tallies.

#### *Millions of Dollars Saved*

I am very proud of the accomplishments identified in the Optimal Utilization report. They have saved the federal government millions of dollars and improved the judiciary's service to the public. Good examples of the economy measures implemented by the judiciary with the help of the AO are: assigning visiting judges to provide short-term assistance as needed; developing and updating staffing formulas for distributing court staff resources in a way that is consistent with the workload; developing criteria for consideration by the Judicial Conference for the release of visiting courtroom facilities and other types of space; providing increased flexibility in personnel and budget systems that enables the courts to maximize use of scarce resources by contracting out for goods and services when it is cost-effective; identifying and promoting use of additional contract opportunities by the courts; establishing centralized, automated paperwork processing systems for the courts such as the Bankruptcy Noticing Center and the Central Violations Bureau; improving the terms of the judiciary's computerized legal research contract; and facilitating the Methods Analysis program which scrutinizes the courts' work processes in order to make recommendations on improvements.

#### *Future Economies Planned by the AO*

But the AO is not going to rest on its laurels. As the Optimal Utilization report indicates, the AO continues to plan for future economies. Some of the most exciting efforts have already been mentioned, such as expanding the use of videoconferencing and implementing the electronic courtroom. Other promising areas are: developing criteria for consideration by the Judicial Conference for not filling vacant judgeships or even eliminating judgeships in district courts; developing a national incentive program to encourage the courts to manage space costs more effectively; containing the cost of death penalty representations by encouraging courts to maintain minimum average caseload-per-attorney ratios, improving record-keeping, and applying case management techniques used in complex civil litigation; and assessing the recommendations of the National Academy of Public Administration on possible ways to make court administrative functions more efficient.

The AO looks forward to working with Congress and the courts on streamlining operations and saving money as the overall federal budget continues to shrink and the courts' workload continues to expand. That is the AO's mission and we are excited about the challenge.

## SUMMARY

Mr. Chairman and members of the subcommittee, you have been very generous in your funding for the courts in the past and very patient in listening to our needs for fiscal year 1998. Although I know you face competing demands from many worthy programs, I ask for careful consideration of the judiciary's needs and those of the Administrative Office. Few government functions are as basic to individual rights or as important to society in total as the federal courts. The nation relies on the federal courts to administer equal justice under the law. The courts, in turn, rely on the AO for support in carrying out their mission in the best, most efficient way possible.

That concludes my prepared statement. I would be pleased to answer any questions you may have.

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PREPARED STATEMENT OF HON. RYA W. ZOBEL, DIRECTOR, FEDERAL JUDICIAL CENTER

Mr. Chairman and members of the subcommittee: My name is Rya Zobel. I am a U.S. district judge and have been the director of the Federal Judicial Center since 1995.

The Center is the federal courts' agency for education of judges and supporting staff and for analysis and evaluation of judicial procedures and case management. This appropriations request has been endorsed by the Center's Board—the Chief Justice as chairman, two circuit, three district, one bankruptcy and one magistrate judge, and the director of the Administrative Office as an ex officio member. It has been coordinated with the Administrative Office and the U.S. Sentencing Commission and with the Judicial Conference's Budget Committee, whose chairman, Judge Heyburn, will speak for the Center today. I am available to answer any questions you may have of me.

For 1998, the Center respectfully requests an appropriation of \$18,425,000, 5.3 percent over our current appropriation. The amount requested is about the same as our 1994 appropriation and \$500,000 less than was available to us in 1992.

The requested increase covers two things. First is \$630,000 for adjustments to our base for inflation and increased pay and benefits costs. Second is \$300,000 in program growth for recurring costs of equipment to enhance our distance education capability and for two video producers and one multimedia specialist. This will help us keep pace with the demand for videotapes for initial orientation and local training programs while producing more satellite broadcasts and computer-based training. Of this requested program growth, \$100,000 is for equipment in our research and development budget activity, but, as our budget request explains, this equipment is for distance education technology in direct support of our training mission.

Even if we add these three positions, the Center's staffing strength will be almost 10 percent below what it was in 1995, when I became director.

I hope you will consider this information as you assess our request.

*Reducing travel costs.*—More than 80 percent of participants in Center training programs attend in their home cities using Center-produced curriculum packages, on-line computer conferences, satellite broadcasts, and videoconferences. There are also many individual users of Center videotapes, manuals, diskettes, and CD-ROM's. We have reduced our travel expenditures since 1995 by more than 22 percent (\$1.2 million). We intend to reduce them an additional \$200,000 in fiscal 1998 and have calculated those reductions into our estimate of overall increased program needs.

*Telet raining.*—We plan eight satellite broadcasts in 1997. In 1996 we presented two national satellite broadcasts—one for judges and others on the 1996 Habeas Reform Act, another for appellate staff attorneys—and a two-way videoconference for appellate deputy clerks. Two 1996 developments will increase use of satellite technology over the next few years.

*Equipping federal courts with satellite downlinks.*—Without downlinks in the courts, we must rent sites across the country and even then cannot reach many court locations. Last summer we assessed the feasibility of, and the courts' receptivity to, placing downlinks in courthouses. I am grateful that the Judicial Conference's Executive Committee, on the recommendation of the Administra-

tive Office, set aside funds to place downlinks in sufficient courts to reach most judiciary personnel. That installation will begin soon.

—*Adding a second broadcast studio.*—We adjusted our fiscal 1996 spending to begin construction of a second video studio, this one dedicated to satellite and two-way video programs. We received financial support from the Sentencing Commission and we are working with the Administrative Office on building renovations. This second studio will augment our ability to broadcast educational programs and to assist the Administrative Office and the Sentencing Commission in similar efforts. As the Chief Justice recently said, “Center expertise in videoproduction and curriculum design will enable the entire third branch to make good use of this form of communication and education.”

*Results-oriented education and analysis.*—Over 98 percent of our appropriated funds for judicial education are devoted to orientation of new judges and basic continuing legal education for all judges, including updates on legislation and case law, techniques for court and case management, and basic substantive knowledge and skills that all judges need to process cases more efficiently and avoid costly delays and reversals.

For example, to help implement last April’s Prisoner Litigation Reform Act and Habeas Reform Act, the Center provided judges and staff not only two satellite seminars but also a Resource Guide for Managing Prisoner Civil Rights Litigation and a newsletter Habeas & Prisoner Litigation Case Law Update, which reports cases under the statutes. These products came from our pro se litigation and capital-case management projects already in place. The Center’s most popular publication with judges is the “Manual on Recurring Problems in Criminal Trials,” now in its fourth edition (the Justice Department also makes this publication available electronically to its attorneys, and numerous defense counsels have sought it either in hard copy or from our Internet site).

The outcomes of our programs are more efficient and more effective courts. The sums cited in the following examples are fairly small but amount to real savings when aggregated. As important, they demonstrate a commitment to use new knowledge to promote efficiency in court operations.

—Since 1995, the Center’s “Maximizing Productivity Project” has helped managers in 60 court units to make more effective use of staff, refine work processes, and expand the use of automation. For example, a bankruptcy clerk’s office credited the project with enabling it to use savings from staff salaries to refurbish key equipment and automation hardware, and, over three years, to release \$600,000 for use by other courts. (However, not all bankruptcy courts have this court’s high proportion of Chapter 7 cases, which are more amenable to automation and thus allow these savings.) A probation-pretrial services office reorganized its staff to reduce clerical personnel and increase by 16 percent the number of officers for presentence investigation and supervision of offenders.

—A before-and-after comparison of juror utilization in the five districts that participated in our most recent utilization workshop shows a savings of \$360,000 in juror fees and a reduction of 5,615 in the number of jurors called into the courthouse unnecessarily.

—Our “Leadership Development Project” is a three-year course of mainly in-district training, workplace analysis, and implementation of management improvements. In one district, a probation officer instituted a program by which offenders help pay for costs of their counseling, drug tests, and related services, at an expected savings of \$68,700 in the first year in which this plan is fully operational.

—Probation officers will use the Center’s “risk prediction index” to identify offenders who need less supervision than others. Based on the index, one large district will be able to shift enough offenders to non-reporting/administrative status to allow up to fifteen officers to concentrate on more dangerous offenders.

—Selected probation and pretrial services officers participate in FJC “System Impact Seminars,” selecting tracks such as substance abuse or financial investigation, to learn techniques that they in turn adapt for particular problems in their districts—a “system impact.”

*Clarification of Center’s mission.*—The Center’s Board has launched a strategic planning process to assess whether we are assigning the right priorities to our many statutory missions in this era of tightly restricted funding. This process has involved consultation with the users of our services and will make for a stronger agency. The committee, comprising the judges on the Center Board and a member of the Judicial Conference Executive Committee, will report to the Center’s full Board later this year.

I thank the subcommittee again for its support. I will be glad to answer any questions you might have about our fiscal 1998 request or about the Center and its missions.

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PREPARED STATEMENT OF GREGORY W. CARMAN, CHIEF JUDGE, U.S. COURT OF  
INTERNATIONAL TRADE

Mr. Chairman, Members of the Committee: The Court's budget request for fiscal year 1998 is \$11,478,000, which is \$364,000 or approximately three percent more than the \$11,114,000 provided for in fiscal year 1997.

The overall increase of \$364,000 consists of "Mandatory Adjustments to Base and Built-in-Changes" as follows: \$302,000 is requested for pay and benefit cost adjustments for judicial officers and court personnel; \$12,000 is requested for other mandatory changes, including increases in postage and printing; \$20,000 is requested for inflationary adjustments for lawbooks; and \$30,000 is requested for GSA space rental increases.

I would like to emphasize that the Court will continue, as it has in the past, to conserve its financial resources through sound and prudent personnel and fiscal management practices.

The Court's "General Statement and Information" and "Justification of Changes", which provide more detailed descriptions of each line item adjustment, have been submitted previously. If the Committee requires any additional information, we will be pleased to submit it.

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PREPARED STATEMENT OF GLENN L. ARCHER, JR., CHIEF JUDGE, U.S. COURT OF  
APPEALS FOR THE FEDERAL CIRCUIT

Mr. Chairman, I am pleased to submit my statement to the Committee for the fiscal year 1998 budget estimate.

The amount of our 1998 budget request totals \$16,156,000. This is an increase of \$1,143,000 over the 1997 appropriation of \$15,013,000. \$599,000 of the increase is for mandatory, uncontrollable increases in costs. The remaining increase of \$544,000 is for funding for additional positions.

*Partial funding for third in-chambers law clerk.*—The court is requesting the additional positions to begin providing third law clerks to the judges. The Judges of this court now have two permanent in-chambers law clerks (compared to three or four for all other circuit judges). The third law clerk is needed because of the complexity of the court's caseload and because all merits decisions are handled in chambers without assistance from a central legal staff. Although the court has asked for 10 full-time-equivalent positions in prior years, this funding request is for five full-time-equivalent law clerk positions. We have reduced our request this year to five positions because of the current budget restraints and the desire of Congress to reduce the deficit. I ask the Committee to approve this court's long-standing need by authorizing the reduced funding requested.

*Funding for information technology positions.*—Also included in this requested increase of \$544,000 is funding for staff positions which are needed because of the increasing use of computers and computer-related services. The increasing use of computer technology by the Judges and the central staff contributes to the efficiency of the court's operations, but a trained staff is needed to install and maintain the more sophisticated and productive computers and related equipment and systems, as well as to keep up with changes in technology, and offer long range planning for the court's future technology needs. Thus, I request funding for these staff positions, the full time equivalent of three positions in the clerk's office, and one position in the administrative services office.

*Mandatory Increases*

As stated above, our fiscal year 1998 increases in mandatory items, over which the court has no control, total \$599,000. As described in our budget materials, these mandatory increases result primarily from inflation and pay increases.

*Program Changes and Requests*

*Personnel Requests—Additional Law Clerks*

The sum of \$360,000 is requested for the third law clerk positions. This would cover an increase of five full time equivalent law clerk positions. This does not provide a third law clerk for each of the twelve active Judges. However, it would allow the court to hire five additional law clerks on a permanent basis. The base budget of this circuit currently provides for two law clerks and one secretary in each cham-

bers, which is one law clerk and one secretary (or additional law clerk) less than the Judicial Conference of the United States has authorized for active judges in all of the other circuits.

The third law clerk positions for all twelve Judges of this court have previously been included in our budget requests for a 1993 supplemental appropriation and in the court's appropriation requests in 1994, 1995, 1996 and 1997. This long-standing need, however, has been denied by Congress without explanation.

One additional in-chambers law clerk for each active Judge of this court has become a necessity because of the increased complexity of our cases, such as patent infringement cases which often have a large number of difficult issues and because of the additional subject jurisdiction which the Congress has given to this court, such as review of Veterans' cases and the appellate jurisdiction under the recently enacted Congressional Accountability Act of 1995 and the Presidential and Executive Office Accountability Act of 1996. During the past few years, the court has hired temporary third law clerks for Judges by using lapsed funds from a vacant judgeship and from vacant staff positions which we decided were not as urgently needed as the additional in-chambers law clerks. As to the latter, we have, for example, delayed implementing our settlement program and deferred hiring three non-legal support staff. The additional, though temporary, help of the in-chambers law clerks has enabled the court to moderate the rise in median disposition time for cases, which is now about eight months, and to prevent a serious backlog of undecided cases.

The court has a great need to have the temporary third law clerk positions made permanent and funded. We anticipate the appointment of a Judge to fill the current vacancy before the end of fiscal year 1997. Once the court has a full complement of Judges, the lapsed funds from a judicial vacancy will no longer be available to hire such clerks on a temporary basis. Further, with only temporary positions we are unable to make a job offer to a potential law clerk at the normal time or to guarantee any employment beyond the end of the fiscal year. These hiring obstacles make it difficult for Judges to hire the best qualified law clerks.

#### *Personnel Requests—Administrative Staff Positions*

*Clerk's Office.*—The court requests funding for the equivalent of three additional clerical positions for the Clerk's Office at a cost of \$131,000. There is now only one secretary in the Clerk's Office. Another Secretary position is needed to assist the chief deputy clerk and the operations manager and to insure that the secretarial functions for the entire office, now exclusively provided by the secretary to the Clerk, are available whenever required. A Systems Manager position is needed because the complexity of the Clerk's database management system has grown beyond the competence of the nontechnical staff to maintain as extra duties. Two Deputy Clerk positions are needed, one position for a calendar/deputy clerk to alleviate the calendar functions now performed by the chief deputy clerk as an extra duty, and one position for a records manager to develop a records management system now required to keep pace with the large increase in the permanent records which the court has accumulated since its creation in 1982 and which must be maintained and preserved.

*Administrative Services Office.*—The Administrative Services Office is responsible for the operations of the court, such as personnel, payroll, coordinating and monitoring of the court's budget, printing and distribution of opinions, maintenance of computers and all other equipment, all purchasing for the court, coordination of building maintenance with GSA, and the like. Because of the increased use of computers by the Judges and staff of the court and the development of e-mail communication, as well as a public bulletin board for distribution of opinions, we find it necessary to request a Systems Manager position at a cost of \$53,000. We are currently provided with only one systems staff member on a permanent basis and it is not possible for this person to keep up with the daily requests and problems throughout the court. With the demands for, and growing use of, computers and computer-related services, we feel this request is fully justified.

I will be glad, Mr. Chairman, to answer any questions the committee may have or meet with Committee members or staff about our budget requests.

#### DEFENDER SERVICES

Senator GREGG. Thank you, Judge, and I appreciate your time in coming here today. I know it's quite a trip.

I want to talk a little bit about the Public Defender Program, because this is the place where we've seen the most explosive increase in cost.

In fact, I was just looking at this chart that my staff gave me which shows me that in 1986 we spent \$59 million for the Public Defender Program. By 1996, we had spent \$305 million. Next year we're talking about going to \$333 million.

And I think I saw a report, or maybe it was an anecdotal statement made to me by somebody, that the attorneys for McVeigh are expecting to charge the Government somewhere in the vicinity of \$50 million to defend that case, which I found incomprehensible and outrageous.

I recall when I was a lawyer, which was a while ago, I had a public defender case assigned to me by the Federal court, and it was a fairly controversial, high-visibility public case in New Hampshire involving a political issue and a criminal trial. I defended this fellow as aggressively as I could, and ended up reaching an agreement where there was no further prosecution. And we used, as I recall at the time, about 22,000 dollars' worth of billable time from my office. I ran a small country practice.

I went to the Federal judge, and I asked for my \$22,000 billable time. He gave me what was the going rate at that time, which I think ended up being \$1,000 or something, and simply ignored my request for further funds on the basis of time.

It does appear, however, that the reimbursement process here has gotten a bit out of control. I notice, for example, on capital offenses, that the average cost for a capital offense—granted, a capital offense is a major item and deserves to have maybe more attention given, although I don't know if that is defensible, but I guess it is perceived that way, anyway—the average cost for a capital offense is \$81,000. My entry question is, Do you see any way of controlling these costs? Are judges aggressively limiting public defender costs in a fair way, obviously recognizing there has to be a Public Defender Program, but recognizing also that this should not be a jar of money into which a group of attorneys decide to stick their hands.

What is the present structure now, and could it be conceivable that the *McVeigh* case would generate that type of a legal fee which the people of this country would have to pay?

Judge HEYBURN. No. 1, you ask a number of excellent questions, some of which I have excellent answers to, and some of which I don't have answers to. And I'll try to be responsive across the board, and then if there is something that you would like to go into further, or you think I've missed, please tell me, because it's not my intention to pass over something. It's just a big subject, a subject I'm very interested in, and I know you are as well. And we could spend a lot of time talking about it, and I know we don't have a lot of time.

Let me respond by saying a couple of things. First of all, the history of defender services is in part a success story of management. We recognized some time ago, and I say we, the judiciary, that defender services costs were increasing, and traditionally these were supplied almost solely by panel attorneys.

The costs of defender services from 1990 to 1991 and from 1991 to 1992 went up 35 and 38 percent respectively each year. That's a lot. At about that time the decision was made that defender services could be better provided and more efficiently through public defender organizations.

The process of evolution started at that time. Since that time, for the last 5 years, the cost of defender services overall has increased approximately 7 to 8 percent per year.

We can see that the cost of defender services as a whole is not going through the roof. We'd maybe like it to be less, but it's not what it used to be.

I think, in part, that is because of the transition from the provision of those services from panel attorneys to defender organizations. Ten years ago, 60 to 70 percent of defender services may have been provided by panel attorneys. Now the percentage has almost flipped.

So we've made that transition. You make these decisions. You never know what the impact is going to be. In retrospect it's been a good one, because the per representation cost of public defenders has been going up over the last 5 years about 2 or 3 percent—basically at the inflationary rate.

#### CAPITAL CASES

If you look at the numbers overall, where is the significant increase, and you've highlighted it exactly. It is in the capital cases. And the costs of panel attorney representation over all has been going up 9 to 10 percent per year, starkly different from that of the defender services.

The reason for that, again, relates to the capital cases. What is happening is that the panel attorneys are no longer getting the easy cases. The only time a panel attorney in those districts where we have a defender organization, the only time they get a case is when it's a multidefendant case, and the defender organization can't, because of a conflict, represent two defendants or three defendants. So the panel attorneys get the more complicated cases, and they usually get the capital cases. So it's not surprising that their per cost of representation is increasing.

What is driving that is the point that you made, and that is that the per cost of representation of capital cases has sort of gone through the roof. Part of that is related to some major cases, such as the *Oklahoma City* case. I'll discuss that in a minute.

We have done an extensive study of trying to figure out why the costs of capital cases are increasing so much more than any other area. And if you look at defender services generally, if you take out capital cases, the defender budget would basically not be increasing a whole lot more than inflation.

So we've pretty much identified from the research I've seen, and I've spent a lot of time on it, the reason why it's increasing. And we've tried to determine, well, why is the cost of the capital cases increasing so much.

And as best we can tell these are the possible answers, and I can't tell you which is the greater influence. But you've got a number of things going on here. You've got a whole lot of people involved in the process who are inexperienced at what they're doing.

The U.S. attorneys haven't, heretofore, been bringing a lot of capital cases, so they devote an incredible amount of resources to them, and they are inexperienced at doing it, because up until 3 or 4 years ago they weren't bringing any.

The people who are defending may be inexperienced, and they try to match in some equivalent form—although probably not completely—whatever resources they perceive are being put into the prosecution, which are tremendous.

The other part of the troika is the judges. And we have tremendous Federal judges, but the fact of the matter is, we have, unless you've been a State judge, no experience in a capital case. And we can't discount that as a factor in the management of the cases. We are not experienced at it.

And so you have three groups of inexperienced people trying these very complicated and high stakes cases and part of the result is inefficiencies. Time and expense because of inexperience that wouldn't result otherwise in your every day drug case, where we all know what the rules of evidence are, and we've done it a lot of times.

So that drives up the cost. The total cost on capital cases is being driven up by two factors. In pure numbers, several years ago there were one or two capital cases. Now, this year, there are about 150 defendants. So by sheer numbers the cost of defense of capital cases is going up. That's something we absolutely can't control.

The other factor that is driving up the per cost of representation is that the cases that exist now as a matrix tend to be more mature. There are more of them going to trial this year than there were last year. And, of course, this is definitely true of the *Oklahoma City* case. When you get to trial the intensity and the expense is going to be greater. So if you factor that into the average, it's going to go up. So all those factors are going to contribute to the increase in costs, the increase in per representation cost.

What can we do about it? Part of it we can't control, because the judges are not likely to get experience in doing this. It's unlikely that many judges will ever try more than one of these kinds of cases. The same may be true of the prosecutors and the defense counsel.

#### COST CONTAINMENT

From our point of view, what we can do, and what we are trying to do is to make the judges aware, those who have these kinds of cases, that there are resources—other judges who have tried these kinds of cases, put them in contact with these judges so that they can take steps to run the cases more efficiently, and reduce expenses.

Quite frankly, another part of the problem is sometimes how these cases are brought. There might be a multidefendant indictment, and only one of the defendants has the death penalty possibility. But if they are all tried together, then all of the counsel who are representing the other defendants are dragged into this lengthy and very complicated case.

So one possibility from a trial strategy point of view would be thinking about severing a case like that, where you normally wouldn't, in a normal drug case, but in this kind of case, you

wouldn't lose anything in terms of justice. It would save a tremendous amount of expense for those who weren't subject to the ultimate penalty.

So there are a number of different things that people have thought up, most of them by judges after they made the mistake, or after the fact, because they didn't have the experience to deal with it ahead of time. So we're trying to bring that experience to bear among the judges who are having these cases. And, of course, we don't know what impact that will have.

Oklahoma City may be the case of the century and it may be an aberration. Whether or not the defense costs are \$50 million, I have no idea, and I really wouldn't want to comment about those costs until we can see what they really are.

But there are tremendous resources being brought to bear in the prosecution of that case, and one can only expect that those defending would try to match it in some way, shape, or form, although I'm sure they won't.

And we all have a concern about that, but I think it's best that we wait until it's over, and then we can assess it, see if we can learn anything from it. It may be like the O.J. Simpson trial, that there's not necessarily anything that we can learn from it, because we hope a similar case will never happen again. It really is an aberration.

Senator GREGG. The difference, of course, is that in the O.J. Simpson trial it wasn't the American taxpayer who was footing the bill for defense.

Judge HEYBURN. That's true.

Senator GREGG. And I think it's very hard to explain to the taxpayer how those types of dollars—let's say it's one-tenth of that, let's say it's \$5 million—and I have no idea what the number is. But I guess my concern is that there doesn't appear to be restraints in place that would make it clear to an attorney in that type of a case that they don't have a bottomless pit, that they don't have a blank check from the taxpayers of this country in this area.

I don't see where there's a loss of a person's right to adequate defense if he has an inexperienced attorney who charges \$500 an hour versus a public defender who knows how to try a case who charges public defense fees. And why shouldn't the attorneys charging \$500 an hour in the private sector be required to be reimbursed at the public defender rate?

Judge HEYBURN. I don't think those lawyers are charging \$500 an hour.

Senator GREGG. To what extent do we limit their reimbursement?

Judge HEYBURN. Those reimbursements are limited in a number of ways. The hourly rate is limited by statute to \$125 an hour. So if Congress in its wisdom would choose to reduce that—

Senator GREGG. Is there an upper limit on the amount of hours that could be charged?

Judge HEYBURN. No; the way that is limited is that every request for payment or reimbursement is reviewed by the judge in the case. And, indeed, sometimes prior to any particular action taking place there may be a review. And that is a process that most

judges take seriously, and it's obviously a process which varies, depending on the case and the circumstances.

The only way we can look at a particular situation and make a judgment about whether the expenses were appropriate or not is, unfortunately, or fortunately, after the fact.

And this is a very unusual case. I would urge everyone to resist the temptation to speculate about whether the funds being used are appropriate or inappropriate until the case is over and we know what the result is, and can fully look at how the moneys were spent. There may be some things which have been in the press which are true, and some which are untrue.

#### CAPITAL CASE COST INFORMATION

Senator GREGG. Well, I think what would be helpful is if \$81,000 is the average cost of a criminal capital prosecution, and there were 83 cases in 1996–97, if you could give this committee, or if your crack staff, which we know is very effective, could get this committee those cases which exceeded the average, how much was spent, so we could get a sense of whether or not there are some cases where they are running up huge bills.

And then we would be interested in ideas on if there is action that needs to be taken legislatively in this area, to try to control this explosive cost in capital case prosecution area, what they are, what your recommendations are that the legislation should do.

Judge HEYBURN. We would be glad to do that. I think we are on the same side of this issue, because we have a lot of judges out there who are required to make very difficult judgments. They approve all of these payments, and having done it myself we have a process of approving all these. I know how difficult it can be when you are attempting to be fair and at the same time trying to avoid a waste of time and money in a trial. But we'd be glad to get you that information, and maybe there are some conclusions we can draw from it.

[The information follows:]

As of March 31, 1997, there have been nine cases with 13 defendants in which the defendant was tried, convicted, and sentenced to death in federal court. Of these 13 defendants, defense counsel was provided by government-paid private (panel) attorneys in eight instances. Counsel for four defendants was provided by either a federal defender or a retained attorney. One defendant's counsel was provided by both a panel attorney and a federal defender. The amount the federal government paid for the legal defense in the trial of each of the eight defendants using panel attorneys, including attorney's fees, experts, and related expenses, ranged from \$144,013 to \$426,114, with the average costs totaling \$284,123. Costs exceeded the average for three of these eight defendants.

The Judiciary has undertaken several initiatives to try to control costs in federal capital prosecutions. We believe administrative, rather than legislative approaches are the more appropriate way to address this issue.

The Defender Services Committee of the Judicial Conference of the United States has initiated, and is continuing to examine, ways to contain the cost of defense representation in capital cases, such as: case budgeting; enhanced training of judges and attorneys; employment of case-management techniques currently used in complex civil litigation; and improvements in panel attorney voucher reviews. In addition, shortly after the hearing, the Committee established a Subcommittee on Federal Death Penalty Cases to examine the availability, quality, and compensation of appointed counsel in federal capital prosecutions. The Subcommittee, chaired by Judge James R. Spencer of the Eastern District of Virginia, will submit a written report, including recommendations for providing cost-effective representation in this area, to the Defender Services Committee in May 1998.

Senator GREGG. Well, I would think there would be. It would just seem to me that there has to be some upper limit here. Attorneys who are defending these cases should understand that this is not a carte blanche, that there is an upper limit. Maybe it's four times the average, or something. But there has got to be some sort of limit, so that we just simply don't spend a dramatic amount of money on specific cases. You can still get justice. It's not an issue, I think, of justice.

#### VIDEOCONFERENCING

What about the electronics area? I know you're always taking a look at this. Are there areas of videoconferencing, or utilizing the explosion in electronic capability to communicate, that could reduce the cost of operating the court system, such as reducing the access to courts of TV and things like that?

Judge HEYBURN. The greatest savings we've seen so far are in the educational programs, and educational programs by videoconferencing, where we're able to draw a number of judges, but particularly staff and clerical people into educational programs without travel.

But a number of the other courts under the leadership of the Administrative Office are experimenting with videoconferencing. A number of bankruptcy courts are doing this. In prisoner litigation, it's proved to be very effective in certain circumstances, where you can have a videoconference from a prison, or for a pretrial conference with judges and lawyers.

And this has proved not only economical from the judges and the defense counsel's point of view—often you have State lawyers representing the prison—but also from a security point of view where you don't have to move the prisoners around, or you don't have to have judges traveling into prisons.

We also have had a number—the second circuit court of appeals, as a matter of fact, is experimenting with videoconferencing of appellate arguments. So there's a lot of experimentation going on, and where appropriate we are trying to implement those technologies.

The difficulty is that unless you have a sufficient volume of a particular kind of proceeding from particular places to another stated place, then the expense of the equipment and everything doesn't justify whatever savings there are.

So we're trying to find where it can be appropriately and efficiently used. And we're working at it hard, and we've found some areas where it seems to be very effective.

#### COST-OF-LIVING ADJUSTMENT

Senator GREGG. Well, on the pay raise issue, as you know, I agree with your concerns. I think keeping quality people in the judiciary is critical and you've got to pay them a fair salary, especially people who have children, who are raising families. But, unfortunately, you're linked to the Congress on this issue, so I don't have a resolution of it. I sympathize with your position.

Judge HEYBURN. Well, I'm glad to have your sympathy, and you have mine, I suppose. But, of course, one solution is the delinking of the two. There are some reasons why it would be appropriate to

delink. We are an independent branch. Congress naturally has political concerns and other concerns that don't necessarily apply to the judiciary.

My immediate suggestion would be the possibility of delinking the two. We think Congress needs a pay raise, too, and we would like to have both of us get a pay raise. Because to a certain extent it's getting to the point where the failure to give a pay raise to the judiciary is holding down career employees of the entire Government. If it's not already, it will shortly.

This is not something new. I was just reading the Federalist Papers, concerning arguments about whether the President's salary should be capped, or the judiciary salary should be capped, and Alexander Hamilton very aptly said the control over a man's substance amounts to the control over his will.

We've not quite gotten to that point with regard to the judiciary's salaries. But the point is well made, and they were discussing whether or not the Constitution should have a cap on judicial or executive salaries. And Hamilton made the point that the judiciary is different from the executive branch, and that from time to time it will appear that a salary which was previously adequate would at a point in time appear to be inadequate.

I believe that all the evidence—there's a broader philosophical—

Senator GREGG. Well, I think the point is that if we're going to get good people in the judiciary, we're in competition with the marketplace that pays 2, 3, 4, 5, 10 times what they are being paid.

You can get people in the judiciary—we're getting good people, still—but you can also get people who maybe couldn't make as much out in the private sector, and those aren't the folks you want. You want the people who could make two or three times, but they've got to have a livable wage. And they have to have something that doesn't make the sacrifice too great.

Judge HEYBURN. You're exactly right. If you're in it for the money, the judiciary, of course, is the wrong place to be.

But another telling comparison, and, of course, every locality is difficult—it may not be quite true in Washington yet—but you go to California, Chicago, LA and you will find fourth or fifth year associates—these are people who are 27, 28 years old—making as much as or more than U.S. district judges and court of appeals judges.

And that is a sobering fact, indeed, for those of us who are on the judiciary. We love our jobs, and I'm not at this point prepared to trade places with a fourth or fifth year associate. But the comparison is something.

Senator GREGG. I think the concern is very legitimate, and we'll see what we can do about it. It's an issue that is beyond this capacity to probably address dramatically.

Thank you very much. We appreciate your time.

#### SUBCOMMITTEE RECESS

Judge HEYBURN. Thank you. We very much appreciate the capable and expert assistance of your staff. And our staff has worked well with them, to answer a number of questions that came up prior to this hearing, and we really appreciate their efforts.

Senator GREGG. The same is true of yours.

Judge HEYBURN. Thank you, sir.

Senator GREGG. Thank you. The hearing is concluded.

[Whereupon, at 2:21 p.m., Thursday, April 17, the subcommittee was recessed, to reconvene subject to the call of the Chair.]

**DEPARTMENTS OF COMMERCE, JUSTICE, AND  
STATE, THE JUDICIARY, AND RELATED  
AGENCIES APPROPRIATIONS FOR FISCAL  
YEAR 1998**

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**THURSDAY, APRIL 24, 1997**

U.S. SENATE,  
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,  
*Washington, DC.*

The subcommittee met at 1:59 p.m., in room S-146, the Capitol,  
Hon. Judd Gregg (chairman) presiding.

Present: Senators Gregg, Stevens, Campbell, Hollings, Bumpers,  
Lautenberg, and Mikulski.

Also present: Senator Faircloth.

**DEPARTMENT OF COMMERCE**

**NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION**

**STATEMENT OF D. JAMES BAKER, UNDER SECRETARY, OCEANS AND  
ATMOSPHERE**

**ACCOMPANIED BY ANDREW MOXAM, DEPUTY CHIEF FINANCIAL OFFI-  
CER, CHIEF ADMINISTRATIVE OFFICER**

**OPENING REMARKS**

Senator GREGG. We will get started then and does anybody have  
any opening statements they wish to make?

[No response.]

Senator GREGG. If not, then we will proceed right to testimony.  
We thank you very much, Dr. Baker, for being here today and obvi-  
ously are interested in knowing what is going on in NOAA and  
your giving us your thoughts and inputs on how we should ap-  
proach the budget.

**FISCAL YEAR 1998 NOAA BUDGET REVIEW**

Dr. BAKER. Thank you, Mr. Chairman and members of the sub-  
committee. We appreciate the opportunity to testify on the NOAA  
1998 request. NOAA's budget requests the resources necessary to  
maintain essential services, to facilitate continuing progress in  
some critical investment areas, and to address its statutory obliga-  
tions.

NOAA provides the United States with the most advanced  
weather and climate prediction system in the world and provides  
the scientific base for managing natural resources and solving envi-

ronmental problems. Its comprehensive system for acquiring observations from satellites to ships to radars provides the quality data and information that are critical to the safe conduct of daily life and basic functioning of a modern competitive economy.

The total 1998 NOAA request is \$2.1 billion in new budget authority. The request is a net increase of about \$78 million over the 1997 enacted level. Of this total, \$1.5 billion are in the "Operations, research and facilities" account and about \$500 million are in the new "Capital assets acquisitions" account and \$7 million are for fisheries funds and other special accounts.

NOAA's budget is allocated according to strategic plan elements. The first of these is advancing short-term warnings and forecasts. During this past year, the Nation continued to experience the benefits of Weather Service modernization. NOAA installed an additional 19 Nexrad radars, 28 automated surface observing stations, and 13 automated weather interactive processing systems, while four new weather forecast office facilities were built or leased.

The NESDIS launch of NOAA's satellite, GOES-K, which will be designated GOES-10 once it is in orbit, was delayed from this morning until tomorrow morning. Once it is launched, it will provide an on-orbit spare so that we can prevent the one GOES situation that NOAA had a few years ago. All of these improvements in the Weather Service can be directly attributed to saving lives and reducing the effects of natural disasters.

With these new technologies, NOAA issued numerous warnings this past year with lead times of tornadoes in excess of 15 minutes. The spring outlook issued by the Weather Service for North Dakota forecast recordbreaking floods for the Red River. The fact is that even the Weather Service predictions for flood levels have been shown to be low only emphasizes the severity of this event. There was no data available that could have predicted this 1,000-year flood event.

The losses suffered in these States would have been much worse without the technologies and the people behind them. The data provided by the Weather Service and its cooperative efforts with FEMA, the U.S. Geological Survey, and the Army Corps of Engineers highlight the continuing need for NOAA to maintain the necessary level for Weather Service base operations, which is reflected in its \$10.8 million request for a base restoration for this effort.

NOAA was required in 1997 to reduce Weather Service staffing and of the 272 incumbered positions required to be reduced on October 1 only 132 remain. Taking into account the reprogramming recently submitted by the Secretary, 12 of these encumbered positions will not be affected this year. The remaining 120 will be eliminated by the use of a RIF, 41 reassignments and 57 buyouts and 10 retirements.

NOAA requested about \$1.2 billion to address this strategic element, an increase of about \$40 million over the 1997 enacted. This element represents the largest portion of NOAA, more than one-half of its activity. The satellite estimates within this request will be updated shortly and the revised numbers will be provided.

There is a good news story in that the polar satellites continue to far exceed their expected lifetimes. We have been recently informed by NASA that they are reducing their internal requirement

for forward funding. After reviewing the NASA requirements in the context of our programs, NOAA believes that the proper level of forward funding should be 2 months rather than 3 months and this saves some funding for all of us.

The second of NOAA's strategic plan elements is implementing the El Niño forecasts. NOAA's goal here is to introduce an operational program for systematic production of regionally accurate climate forecasts, critically important for agriculture. In 1996, NOAA developed and implemented an improved version of the coupled forecast model resulting in skill improvements for the entire record. NOAA requested about \$115 million to address this strategic goal.

Our third strategic element under assessment is predicting and assessing decadal to centennial change, and long-term global change. NOAA's goal is to provide accurate measurements of the changing environment and to develop the science and science-based options that are necessary for policy decisions. To accomplish this effort NOAA is requesting a total of about \$91 million.

The final element of our plan under the environmental assessment and prediction goal is to promote safe navigation. NOAA appreciates that over the past several years this committee has been very supportive of its nautical charting capabilities. As you know, 90 percent of the cargo that comes into the country comes through the Nation's ports. NOAA requests \$85 million to address this strategic element, a net decrease of \$7 million from 1997, which represents its proposal to transfer aeronautical charting over to the Department of Transportation. It does represent an increase of about \$7 million in the base mapping and charting functions that we have.

The NOAA ship, *Ronald H. Brown*, will be commissioned on July 19 at its home port in Charleston. With its advanced meteorological and scientific systems, it is a unique vessel in the U.S. oceanographic fleet in its ability to conduct both atmospheric and oceanographic research in support of NOAA's environmental assessment and prediction goal. NOAA will be offering part of this ship for use by the university community.

The first of the strategic elements under NOAA's environmental stewardship goal is to build sustainable fisheries. NOAA continues to make progress toward rebuilding and maintaining the health of U.S. fisheries. Successful efforts in this element will add billions of dollars to the economy over the next 10 years. NOAA requests \$332 million to address this element, a net increase of about \$5 million over 1997.

The second of NOAA's stewardship plan elements is to recover protected species which is concerned with the conservation of the Nation's living marine resources. We request about \$70 million to address this strategic element.

The third strategic element under stewardship is sustained healthy coasts, which focuses on improving our understanding of the way coastal ecosystems function, coupled with an ability to predict responses of ecosystems to human activities and to take appropriate action. In August 1996, President Clinton announced a bold new initiative challenging the Federal Government and the States and the Congress to protect all communities from toxic pollution.

NOAA has a key role in this interagency initiative that is designed to make coastal waters safe and clean for all Americans by the year 2000. NOAA is an important participant in the President's clean water initiative designed to protect all communities from pollution that is threatening their waters. Building on existing programs within the National Ocean Service, the initiative will utilize the coastal zone management program, will expand our coastal monitoring activities, as well as develop state-of-the-art monitoring technologies at the University of New Hampshire program. This past year we have increased the pace of coastal habitat restoration with 50 projects benefiting 40,000 acres in partnership with Federal, State, and local agencies. We request about \$212 million to address this strategic goal.

Mr. Chairman, before I conclude, I would like to state that NOAA recognizes that we have had problems in the past with responding to congressional inquiries, report requests, and providing written answers to questions in a prompt manner. I want to assure you that I take this problem very seriously and we have instigated several steps to assure that you receive requested material as quickly as we can provide it.

#### PREPARED STATEMENT

In conclusion, Mr. Chairman, may I say that every day in some way every person in the United States uses the services that are provided by NOAA. We welcome the coming discussion on our goals, priorities, and operations with Congress, our constituents, and the public.

Thank you.

[The statement follows:]

#### PREPARED STATEMENT OF DR. D. JAMES BAKER

##### INTRODUCTION

Thank you, Mr. Chairman, and members of the Subcommittee, for this opportunity to testify on the President's fiscal year 1998 Budget Request of the National Oceanic and Atmospheric Administration (NOAA). As America moves into the 21st century, our domestic security and global competitiveness will depend on the types of capabilities, services and products delivered by NOAA. I would like to address how this proposed budget maintains an appropriate balance among the environmental assessment and prediction, and environmental stewardship, needs of the nation. I am accompanied today by Terry Garcia, Acting Assistant Secretary for Oceans and Atmosphere; Diana H. Josephson, Deputy Under Secretary; and Joseph Kammerer, Chief Financial Officer/Chief Administrative Officer. Also, NOAA's Assistant Administrators and Office Directors are present.

##### NOAA ROLE: DOING WHAT'S NEEDED

NOAA's fiscal year 1998 budget continues to reflect this Administration's commitment to meeting the challenges facing America by putting to good and efficient use technology and information, to insure the continued security, prosperity, and vitality of our Nation. NOAA has applied cutting-edge technologies and innovations to provide the U.S. with the most advanced weather and climate prediction systems in the world. NOAA conducts research to improve operations, develop new technologies, and supply the scientific basis for managing natural resources and solving environmental problems. NOAA's comprehensive system for acquiring observations—from satellites to ships to radars—provides the quality data and information critical to the safe conduct of daily life and basic functioning of a modern economy.

The fiscal year 1998 NOAA budget represents the right level of investment to protect the environment and assure economic growth. Investment in our Nation's and the world's environmental health is an investment in economic well-being. NOAA

plays a key role in a Department whose structure encourages the integration of economic, statistical and environmental information and technology development to assure a future of economic opportunity and prosperity for all Americans.

The mission of the National Oceanic and Atmospheric Administration (NOAA) is to describe and predict changes in the Earth's environment, and conserve and manage the Nation's coastal and marine resources to ensure sustainable economic opportunities. This mission involves basic responsibilities of government for ensuring general public safety, national security and environmental well-being, and promoting economic growth. The successful execution of this mission depends on adequate funding for, and synergy among component activities of NOAA. Common end products and services include weather warnings and forecasts, environmental technologies, marine fisheries statistics and regulations, nautical charts, assessments of environmental changes, and hazardous materials response information. These capabilities, products and services support the domestic security and global competitiveness of the United States, and affect the lives of nearly every citizen every day.

In a period of strongly competing government priorities, the President's fiscal year 1998 Budget Request for NOAA affirms the agency's role by providing the resources to maintain essential services, facilitate continuing progress in critical investment areas, and address statutory obligations. This proposed budget ensures an appropriate balance among the environmental assessment, prediction and stewardship needs of the Nation.

NOAA's services typically require highly concentrated investments but yield widely dispersed benefits. These services affect the lives of nearly every citizen every day, thus NOAA's work represents a wise and appropriate investment by the taxpayer.

NOAA's strategic planning process defines and validates its business activities, guides the development of operating plans, and forms the basis for management decisions. The Strategic Plan provides the framework for articulating and organizing the agency's goals and work objectives. NOAA's goals for the future will enhance opportunities for our citizens, the health of the U.S. economy, the protection of our environment, and the sustainable use of our national resources.

The challenge of investing strategically in the Nation's future is accompanied by the requirement to be more effective, to identify and realize opportunities for savings and to focus the efforts of Government on what matters to people. Performance is what counts, and the fiscal year 1998 budget includes measures which track results to the level of investment. Success in this changing world increasingly will depend on partnerships with business and industry, universities, state and local governments, and international parties. NOAA will continue to develop partnerships to leverage resources and talent, and provide the means for meeting program requirements more effectively.

NOAA has made the Government Performance and Results Act (GPRA) operational following strong participation as a pilot agency. During the pilot period, NOAA was selected by the Office of Management and Budget as one of ten exemplars and was commended by the GPRA review panel of the National Association of Public Administration (NAPA). Currently, NOAA is working with the General Accounting Office to identify best practices for Federal agencies to follow, contributing to National Performance Review (NPR) performance measurement benchmarking studies, and assisting the Department of Commerce with developing a DOC Strategic Plan for submission to OMB by September, 1997. NOAA views the GPRA as a management tool to facilitate decision-making. NOAA has integrated performance measures into its planning, budgeting, and management review cycles, and is designing a program evaluation process to measure agency-wide progress toward meeting goals.

#### HIGHLIGHTS OF THE FISCAL YEAR 1998 BUDGET

The total fiscal year 1998 NOAA request is \$2.1 billion in new budget authority. The request is a net increase of \$78.5 million over the fiscal year 1997 enacted level. Of this total, \$1,540.8 million are in the Operations, Research and Facilities (ORF) account, \$503.5 million are in a new Capital Assets Acquisition account, and \$6.9 million are for fisheries funds and other special accounts.

NOAA's budget is predicated on the need to ensure the continued delivery of essential science, technology and services to the Nation. Highlights of the request are presented, as follows, in the context of the NOAA Strategic Plan and with an emphasis on the major operational units and programs contributing to the strategic goals. The Strategic Plan establishes the seven major goals of the agency, and guides the most effective combined application of the entire suite of agency assets for attaining these goals, which are grouped into two missions, Environmental Stew-

ardship, and Environmental Assessment and Prediction. Resources for program administration, acquisition of data, aircraft services, and supporting infrastructure are included in the total request for each strategic goal.

#### ACCOUNT STRUCTURE CHANGES

The fiscal year 1998 President's Budget contains a number of proposed changes to the NOAA account structure. First, is the establishment of a Capital Assets Acquisition account which will seek multi-year appropriations for capital projects contained formerly in the Operations Research and Facilities account, Construction account and Fleet Modernization, Shipbuilding and Conversion account. In addition, NOAA proposes to eliminate the Fleet Modernization, Shipbuilding and Conversion and Construction accounts and incorporate the projects not requested in the Capital Assets Acquisition account into two new activities: Facilities and Fleet Maintenance and Planning within the Operation, Research and Facilities account.

The NOAA budget request includes transfers of \$66.4 million from the Department of Agriculture to the Promote and Develop Fishery Products and Research Pertaining to American Fisheries account and \$5.2 million from the Department of Interior to the Damage Assessment and Restoration Revolving Fund.

NOAA also proposes to change the Fishing Vessel Obligation Guarantee account to the Fisheries Finance, Program account. This proposed change is the result of a recent amendment to the Magnuson-Stevens Fishery Conservation and Management Act that changed the program from a loan guarantee program to a direct loan program. This program includes accounts for loans previously awarded as loan guarantees and the new direct loans.

The budget also proposes an increase in the financing from the deobligation of prior year recoveries to \$24 million to reflect anticipated one time major contract savings of \$10 million. The fiscal year 1998 request reflects scoring of the spending authority for the Coastal Zone Management Fund (CZMF) as discretionary budget authority.

#### ENVIRONMENTAL ASSESSMENT AND PREDICTION

Advancing Short-Term Warning and Forecast Services to provide significantly improved short-term warning and forecast products and services that enhance public safety and the economic productivity of the Nation.

NOAA requests \$1,178.4 million to address this strategic goal, a net increase of \$39 million over fiscal year 1997. The objectives are to: complete weather service modernization; maintain operational satellite coverage; strengthen observing and prediction systems; and improve customer service to the public.

These objectives will be accomplished primarily through the efforts of the National Weather Service (NWS), the National Environmental Satellite, Data and Information Service (NESDIS) and the Office of Oceanic and Atmospheric Research (OAR).

For the NWS, the request includes: \$438 million, a net decrease of \$8.1 million from 1997, to support the current operational and research infrastructure and continue planned streamlining activities under the modernization, including the critical restoration of funding for NWS base operations of \$10.8 million; and \$191.6 million for major systems acquisition supporting the modernization, a net increase of \$14.4 million. Within the total amount for systems acquisition, the request includes \$116.9 million for continued deployment of the Advanced Weather Interactive Processing System (AWIPS), an increase of \$16.9 million over 1997.

For NESDIS, \$372.1 million is needed to ensure continuous GOES and Polar-orbiting satellite coverage. Of this amount, \$51.5 million is required to meet NOAA's commitment to share development costs with the Department of Defense for the National Polar-orbiting Operational Environmental Satellite System. While this represents an increase of \$22.5 million over the 1997 enacted, this program continues to account for government-wide savings in excess of \$1 billion over the life of the program and remains a major success story of the National Performance Review. In addition, \$51.4 million is requested for the continuation of Environmental Observing Services and the portion of Data and Information Services included within this goal.

For OAR, a total of \$49.6 million is requested to advance the science of weather forecasting over land, sea and space, and to improve weather-related observing technologies, a decrease of \$2.4 million from 1997.

The scientific and capital investment required for the modernization of weather services including radars and satellites, advanced computer models and communications systems, and field restructuring is paying off with lives saved, property damages avoided, and impacts mitigated for weather-sensitive sectors of the economy.

During 1996, NWS forecasters issued numerous tornado warnings with lead times in excess of 15 minutes, reducing the loss of life. During Hurricane Fran, warnings were issued 31 hours before the storm made landfall; flood potential statements were issued two to three days in advance as the storm headed north; and six hours of advance notice were provided for flash flooding. In January of 1996, the NWS issued three- to five-day advance forecasts of the east coast blizzard, prompting emergency authorities to significantly enhance response preparations and airlines to move their air fleets from affected regions. These results show that improved warning and forecast services are enhancing public safety and the economic productivity of the Nation. Once modernization is completed, the Nation should realize annual benefits to the economy of some \$7 billion.

Implementing Seasonal to Interannual Climate Forecasts to increase society's ability to mitigate economic losses and social disruption by working together with academic and multinational partners, in order to issue monthly and seasonal probability outlooks for temperature and rainfall for up to a year in advance.

NOAA requests \$115.3 million to address this strategic goal, a net increase of \$3.1 million over fiscal year 1997. The objectives are to: deliver useful climate forecasts and information; enhance observing and data systems providing input to model predictions; invest in process and modeling research leading to improved predictions; and assess the impacts of climate variability on human activity and economic potential.

These objectives will be accomplished primarily through the efforts of the NOAA Climate and Global Change Program, the OAR Environmental Research Laboratories (ERL's), NESDIS, and the NWS National Centers for Environmental Prediction.

For OAR, the request provides \$66.8 million to: develop operational El Niño-Southern Oscillation (ENSO) observations, including an increase of \$4.9 million over 1997 to ensure an operating base for the Tropical Oceans-Global Atmosphere (TOGA) system and reflect the maintenance responsibilities from NOAA's Climate and Global Change program. Funding will also be used to improve dynamical seasonal prediction activities at the National Centers for Environmental Prediction, including automating the production of climate forecasts and delivering forecast and monitoring products; support the International Research Institute for climate prediction; improve climate modeling over North America; and assess socio-economic impacts.

For NESDIS, \$37.2 million is needed for observing and data systems and data management requirements including the National Climatic Data Center, for improvements to the satellite active archive, and for linking NESDIS data centers and other NOAA centers of data via a virtual data system. In addition, \$2.8 million is requested for the National Ocean Service (NOS) to maintain and improve observing and data delivery systems that support climate forecasting requirements, and \$4.7 million is requested for the NWS to provide operational climate predictions and analyses under central forecast guidance, and update products on delivery systems.

Emerging capabilities to forecast climate are the result of federal investments in basic research, development and deployment of global observing and data systems, and the transition of research findings to operational needs. Climate services will be as important to 21st century economies and societies as weather forecasting is today, and the future capacity to deliver uniform climate information will continue to depend strongly on federal support for process and modeling research, and for the collection of global data needed to initialize and validate climate models. For example, the insurance industry has become increasingly vocal in its support of the essential science underlying climate prediction, due to the tremendous economic impact of weather related natural disasters. According to the Worldwatch Institute's 1996 State of the World report, since 1990, insurance providers worldwide have paid out \$48 billion for weather-related losses, compared with losses of \$14 billion for the entire decade of the 1980's.

Predict and Assess Decadal to Centennial Changes in the global environment, specifically for: climate change and greenhouse warming; ozone layer depletion; and air quality improvement.

NOAA requests \$90.6 million to address this strategic goal, a net increase of \$3.2 million over fiscal year 1997. The objectives are to: characterize the agents and processes that force climate change; examine the role of the ocean in influencing change; ensure a long-term climate record; guide the rehabilitation of the ozone layer; provide the scientific basis for improved air quality by understanding and monitoring surface ozone; and develop predictive models scientific assessments, and human impacts information related to long-term change.

These objectives will be accomplished largely through the efforts of the NOAA Climate and Global Change Program and OAR. In OAR, the request includes: \$28.7

million for climate and global change research an increase of \$1.9 million; \$7 million for the Global Learning and Observations to Benefit the Environment (GLOBE) Program, an increase of \$1 million over 1997; \$25.9 million for long-term climate and air quality research, including an increase of \$1 million for NOAA's health of the atmosphere initiative in preparation for the Nation's first scientific air quality assessment; \$1.5 million for advanced computing support; and \$7.7 million for improving our understanding of the role of oceans in influencing climate change. In addition, \$3.2 million is requested in NESDIS for data and information services supporting the long-term climate record; and \$8.2 million is needed in the NWS to continue to provide temperature, precipitation, evaporation and river stage data for climatic and hydrologic monitoring and services.

In collaboration with university, government and international partners, NOAA provides the measurements, research, models, predictions and assessments that form the scientific basis for understanding global change phenomena. For over three decades of long-term monitoring, NOAA has produced incontestable evidence that carbon dioxide is increasing in the atmosphere. NOAA also has documented a decrease in tropospheric levels of ozone-depleting chemicals, a first-time observation that demonstrates the emerging effectiveness of the Montreal Protocol. Late in 1995, the U.N. Intergovernmental Panel on Climate Change (IPCC) released findings indicating that temperature may increase 1 to 3.5 degrees Celsius, and sea level may rise 15 to 95 centimeters, by the year 2100. These global trends will affect both natural processes and human systems, including agriculture, energy, and the worldwide transmission of diseases. NOAA played a lead role in developing the scientific assessments upon which the IPCC report was based. Decisions on actions to mitigate anticipated changes on the order of decades to centuries will never receive domestic and international backing unless they are supported by sound science. NOAA continues to work to provide leadership and science-based information for these types of decisions, focusing on climate change and greenhouse warming, ozone layer depletion, and air quality improvement.

Promote Safe Navigation by building, maintaining, and delivering a digital nautical charting database which integrates satellite positioning, tidal heights and currents, radars and sonars, and navigational aids.

NOAA requests \$84.7 million to address this strategic goal, a net decrease of \$7.2 million from fiscal year 1997. The objectives are to: deliver a digital nautical charting database to underpin new electronic navigational systems; update nautical surveys using full-bottom coverage technologies; install systems to provide mariners with real-time observations and forecasts of water levels, tides and currents, and weather conditions in major ports; transform the obsolete geodetic reference frame into a Global Positioning System-based system; and provide for the two-year transition of aeronautical charting to the Federal Aviation Administration (FAA).

These objectives will be accomplished largely through NOS's mapping, charting and geodesy, and observation and prediction subactivities. NOS is requesting \$25 million to deliver digital nautical charting databases, including the production of raster nautical charts; \$11.8 million to update nautical surveys; \$23.2 million to acquire oceanographic and hydrographic data and to make available marine predictions and advanced oceanographic observations important to pilots and port authorities and; \$19.2 million to provide a national spatial reference system that utilizes the Global Positioning System (GPS) for navigation and positioning.

This request also reflects a \$14.5 million decrease for the first stage of a two-year transfer of the aeronautical charting program to the Department of Transportation. In fiscal year 1998, the funds will be transferred but the program's employees will remain in NOAA and would continue the processing and delivery of aeronautical information on a reimbursable basis. In fiscal year 1999, the employees will also be transferred and NOAA's involvement with the program will end.

Finally, NOAA is requesting \$12.6 million to replace funds formerly received from the National Imaging and Mapping Agency (NIMA, formerly the Defense Mapping Agency, DMA). This increase will result in the entire compilation cost of the nautical charts being included in NOAA's budget.

Sea-going commerce has tripled in the last 50 years, and 98 percent of our international trade by weight moves through U.S. ports. Fifty percent of the total tonnage is oil or other hazardous material. Despite the risk that accompanies increasing traffic, and the competitive advantage of modern observations and systems, much of the Nation's charting and geodetic infrastructure is not up to world standards. Accurate charts and modern navigation systems are required for safe and efficient maritime transport. NOAA collects, processes and distributes such information in support of national, commercial and individual needs. NOAA is working to modernize U.S. marine and air navigation, mapping and surveying, and to provide a precise satellite-derived reference system as the basis for the Nation's 21st century

positioning needs. For example, during 1996, NOAA's NOS produced 235 new editions of nautical charts and 14,682 new aeronautical charts and associated products; acquired and processed data from 50 hydrographic surveys and two airborne laser surveys; reduced the data-to-chart time from years to six months by implementing a "just-in-time" delivery system for applying new hydrographic data to nautical chart editions; and installed 153 Federal Base Network stations, and 47 continuously operating reference stations, that will form the basic positional framework for the Nation's future spatial data infrastructure.

#### ENVIRONMENTAL STEWARDSHIP

Build Sustainable Fisheries to greatly increase, over the next decade, the Nation's wealth and quality of life through sustainable fisheries that support fishing industry jobs, safe and wholesome foods, and recreational opportunities.

NOAA requests \$332 million to address this strategic goal, a net increase of \$5.1 million over fiscal year 1997. The objectives are to: assess the status of fishery resources; advance fishery predictions; manage for economic growth by developing plans for reducing excessive fishing and capital investment; ensure adequate compliance with fishery regulations; and provide research and services for fishery-dependent industries to maximize benefits from marine resources.

These objectives will be accomplished primarily through the efforts of the National Marine Fisheries Service (NMFS), OAR and NOAA's Coastal Ocean Program (COP). For NMFS, the request is \$256.3 million (this includes \$19.4 million for Acquisition of Data previously funded in the Marine Services subactivity), a net increase of \$7.6 million over 1997 to: collect, evaluate and disseminate fisheries data including developing strategies for bycatch reduction; conduct conservation and management operations including funding of Regional Fishery Management Councils for developing and amending fishery management plans; execute provisions of the recently-passed Magnuson-Stevens Fishery Conservation and Management Act including providing for new national standards and implementing essential fish habitat requirements; improve at-sea and shoreside compliance; and provide grants and other assistance for fisheries development programs. NOAA also requests an increase of \$23 million to address new facilities needs, including the replacement of the Tiburon, California fisheries laboratory at Santa Cruz, and to maintain existing laboratories. For OAR, funding of \$23.5 million in the Sea Grant Program, National Undersea Research Program (NURP), and marine prediction research subactivities is needed to: improve technologies for tracking and estimating aquatic biomass; advance aquaculture and economic growth initiatives; apply new computing techniques; and provide for other research activities including in-situ undersea research. For COP, \$7.4 million is requested to strengthen abilities to assess and predict natural and human-induced changes and their impact on fisheries health.

There is a strong consensus among lawmakers, fishery managers, the fishing industry and the public, that depleted fishery resources must be restored and healthy fisheries must be maintained and managed for greater efficiency. Of the fishery stock groups under the purview of NOAA for which population status is known, 36 percent are overutilized. Even fisheries that are producing a large catch are doing so with unnecessary cost and waste. Well-managed fisheries produce significant and continuous benefits, such as the \$1 billion Alaskan groundfish fishery. Controlled access measures implemented in the \$180 million Alaskan halibut/sablefish fishery have resulted in reduced accidents and property loss, increased economic value of the resource, and reduced bycatch. Since 1994, NOAA has increased the number of fishery management plans with access controls implemented by 41 percent. NOAA estimates that restoring fisheries will have a potential \$25 billion total positive impact on the national economy.

NOAA is providing the federal leadership and support to make this happen. Accurate and timely resource assessments are being used to guide management decisions. NMFS, the Coastal Ocean Program, the National Sea Grant College Program, OAR's Environmental Technology Laboratory, and other parts of NOAA, are conducting research to advance fishery predictions, reduce costs of conventional stock assessments, develop advanced remote sensing techniques, improve fishery habitat and mitigate harmful algal blooms. The recently reauthorized Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) strengthens the ability of NMFS and the eight Regional Fisheries Management Councils to apply the results of research in adopting management measures that will ensure sustainable fisheries for the Nation. Enforcement is carried out to ensure compliance with regulations, and NOAA is working with state and international partners to develop policies for managing fisheries that occupy multiple geo-political zones. In addition, NOAA continues to design and implement harvest capacity reduction programs, and programs

to provide fishermen with economic and technical support during stock rebuilding efforts.

Recover Protected Species to conserve marine species and to recover those in danger of extinction. By 2005, NOAA will be on the road to recovering every marine species at risk and maintaining the healthy marine ecosystems upon which they depend.

NOAA requests \$69.7 million to address this strategic goal, a net increase of \$7 million over fiscal year 1997.

The objectives are to: assess the status of, and impacts to, protected species; and develop and implement conservation and recovery plans for depleted marine mammals and endangered and threatened species.

These objectives will be accomplished primarily through the efforts of NMFS. The request includes: \$37.8 million for status reviews and stock assessments; and \$25.8 million, an increase of \$7.6 million over 1997, for developing recovery, conservation and take reduction plans for the management of protected and depleted species. The majority of the requested increase will ensure that NMFS can address major responsibilities for responding to currently listed and proposed for listing West Coast salmon and steelhead species under the Endangered Species Act (ESA). Increases are also requested to expand recovery actions for endangered Kemp's ridley turtles, strengthen Atlantic right whale recovery efforts, and establish cooperative conservation program agreements under the ESA with additional states, including Alaska, California and Washington.

The existence of the Marine Mammal Protection Act, the Endangered Species Act and other legislation provide a clear indication of public support for strong efforts to conserve living marine resources. The desired outcome of this effort is to recover species in danger of extinction in a manner compatible with the sustainable use of marine resources. During 1996, NMFS initiated four marine mammal take reduction plans and updated fifty marine mammal stock assessments, strengthened turtle excluder device requirements and increased cooperation with Mexico to maximize hatchling production of turtles, and conducted hundreds of ESA § 7 and § 10 consultations. These and other accomplishments have improved the status of species while minimizing the impact of conservation measures on economic and social activities.

Sustain Healthy Coasts in order to maintain the health, productivity, and biodiversity of the Nation's coastal ecosystems.

NOAA requests \$212.2 million to address this strategic goal, a net increase of \$18.7 million over fiscal year 1997. The objectives are to: protect, conserve and restore coastal habitats and their biodiversity; promote clean coastal waters to sustain living marine resources and ensure safe recreation, healthy seafood and economic vitality; and foster well-planned and revitalized coastal communities that sustain coastal economies, are compatible with the natural environment, and minimize the risks from natural hazards.

These objectives will be accomplished primarily through the efforts of NOS, COP, OAR, NMFS and NESDIS. For NOS, the request includes \$128.4 million, an increase of \$26.5 million over 1997 for: pollution response, damage assessment and restoration needs; estuarine and coastal monitoring and assessment activities; support for estuarine reserves and marine sanctuaries; conduct of NOAA's Coastal Zone Management program; and NOAA's continuing work in interagency environmental initiatives, including the President's Clean Water Initiative and continued restoration of the South Florida ecosystem. NOAA is an important participant in the President's Clean Water Initiative which is designed to protect all communities from pollution threatening their waters. Building on existing programs in Coastal and Great Lakes, the initiative will utilize the Coastal Zone Management Program; expand NOAA's Coastal Monitoring activities, as well as develop new state of the monitoring technologies at the University of New Hampshire program. For COP, \$7.7 million is needed to support regional-scale modeling and prediction of cumulative impacts of multiple stressors on habitats and living marine resources.

For OAR, \$37.7 million, a decrease of \$7.1 million from 1997, is requested for research, outreach and technology development through Sea Grant, NURP and the ERL's on coastal issues such as: control and prevention of nonindigenous species; monitoring, assessment and restoration of degraded habitat and water quality; reduction of non-point source pollution; fate of toxic chemicals; impacts of harmful algal blooms; and community preparedness for coastal hazards including hurricanes and oil spills.

For NMFS, the request includes \$19.7 million for fisheries habitat protection and restoration activities including providing technical support for improving wetlands, and conducting permit reviews for projects affecting living marine resources including licensing of dams. Of the increase requested for NMFS in fiscal year 1998, much

of the effort in fiscal year 1998 will be focused on actions that contribute to the recovery of endangered West Coast salmon and steelhead species. In addition, \$4.9 million is required in NESDIS for data and information services related to improving the understanding of coastal functions and for ocean remote sensing.

Maintaining the health, productivity and biodiversity of coastal ecosystems is essential to the sustainable development of coastal economies and the future welfare of the Nation. This goal addresses the practical needs and concerns of resource managers, as well as strengthening the watershed and regional management frameworks provided by state Coastal Zone Management programs. This is an enormous challenge considering that well over half of the U.S. population lives on the 10 percent of land defined as coastal. Coastal concerns require integrated solutions because problems transcend state and natural boundaries. Successful management of these biologically, geographically and economically complex areas depends strongly on federal guidance and collaboration, such as with the unveiling of the final management plan for the Florida Keys National Marine Sanctuary and the conditional approval of 27 of 29 states coastal non-point pollution programs, during 1996.

In addition to activities stressing planning, prevention and sustainable use, NOAA provides monitoring and rapid response capabilities to limit harm to ecosystems affected by human intervention. During 1996, NOAA completed the first Nationwide assessment of the spatial extent of toxic contaminants in sediments and bivalves in coastal waters, documented the magnitude and extent of contaminants in heavily contaminated Boston Harbor, and provided technical and scientific assistance to the Coast Guard at 70 oil and chemical spills.

#### REDUCING COSTS AND IMPROVING EFFECTIVENESS

In an environment of tightening dollars and increasingly complex challenges, NOAA is reducing costs and improving program effectiveness. NOAA is saving money through streamlining personnel and processes, outsourcing where appropriate, and leveraging external resources and talent. NOAA holds managers accountable for results, and for using performance measures to validate progress. The highest priority continues to be to ensure that critical services are provided well.

#### COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

Through the National Science and Technology Council's (NSTC) Committee on Environment and Natural Resources (CENR), NOAA works with other federal agencies and non-governmental experts to design and prioritize the government's environment and natural resources research and development agenda. This interagency planning and coordination ensures the effective application of available resources.

The NSTC has identified Improving Environmental Quality as one of its six goals. Improving environmental quality requires supporting a broad and comprehensive research agenda, including: (1) observing, documenting, understanding, assessing and predicting environmental change and its consequences; (2) using natural resources in a sustainable manner; (3) understanding and preserving biodiversity; and (4) developing analytical tools that integrate social, economic and natural sciences to support policy formulation. NOAA's fisheries and protected species programs are embodied in this priority area of concern.

Agencies are expected to continue strong support of a number of ongoing interagency programs and initiatives that are priorities for fiscal year 1998, and in which NOAA will participate. These include: The U.S. Global Change Research Program, with increased emphasis on consequences of changes on humans and ecosystems, particularly at regional levels; The North American Research Strategy for Tropospheric Ozone; National Environmental Monitoring and Research Initiatives; Natural disaster reduction (including the Hazard Information and Loss Reduction Initiative), with enhanced international cooperation in science and technology to reduce the damage to communities caused by natural disasters through improved monitoring, mitigation and response; Environmental technologies, with an emphasis on energy efficiency R&D and lowering carbon dioxide emissions; Endocrine disrupter research, focusing on understanding how low concentrations of chemicals can affect the growth and reproduction of living marine mammals; and NOAA R&D as the systematic study to gain knowledge or understanding necessary to determine the means by which a recognized and specific need may be met.

#### "NATIONAL PERFORMANCE REVIEW" AND STREAMLINING

In an effort to create a government that works better and costs less, NOAA is re-inventing itself by achieving the goals outlined in the National Performance Review (NPR). Weather Service modernization, begun well before the NPR, is re-invention in the making. Owing to the range and effectiveness of new technologies, the NWS

is realigning its field structure to reduce the number of offices from over 300 to 119. A National Institute of Standards and Technology study shows that every dollar spent on weather service modernization buys eight dollars in benefits for the taxpayers. The scientific and technological basis for this modernization has been provided by NOAA's own research and development capabilities, which now are being applied to maximize the benefits from the new systems. As a result, the U.S. now enjoys the most modern and efficient weather service in the world. A brief status of other NOAA NPR initiatives follows:

*Streamlining personnel and processes.*—By 1999, NOAA plans to have reduced its workforce by 14 percent from 1993 levels. This will require the elimination of 2,061 full-time equivalents (FTE's) through phased annual reductions in the NOAA Streamlining Plan. NOAA proposes in fiscal year 1998 to begin to transfer to the Department of Transportation (DOT) the production of aeronautical charts. In fiscal year 1998, NOAA would operate the aeronautical charting program on a fully reimbursable basis, with the entire program, including FTE's, being fully transferred to DOT in fiscal year 1999. NOAA has simplified administrative processes, delegated authorities downward, and made progress toward implementing the Commerce Administrative Management System, which will greatly improve financial management and accountability.

*Converging satellites.*—NOAA is working with the Department of Defense to merge civilian and defense weather satellites. NOAA and DOD recently agreed to defer the need for the first satellite in the system. A comprehensive program evaluation, which will include a thorough review of current cost estimates, program content, and acquisition status, will be conducted in the spring of 1997.

*Disestablishing the NOAA Corps.*—The fiscal year 1998 budget request calls for the disestablishment of the NOAA Corps. The Corps, which is a uniformed service, has been downsized significantly in the last two years and pursuant to the Department's fiscal year 1997 appropriations act, will be reduced in size to not more than 299 officers by September 30, 1997. The disestablishment legislation is expected to propose that essential NOAA functions be continued through the use of civilian employees. The fiscal year 1998 budget includes an increase of \$6 million over 1997 to fund costs associated with the proposed disestablishment.

*Closing NWS field offices.*—The NWS expects the Secretary of Commerce to be in a position to certify "no degradation of service" in order to automate and/or close over 100 weather service offices in fiscal year 1997, under the current provisions of Public Law 102-567, the law governing weather service modernization. In order to expedite closure of about 200 NWS field offices, NOAA continues to propose amending Public Law 102-567. The proposed amendments will streamline certification provisions related to the restructuring and closure of weather service offices without compromising the quality of the review. The fiscal year 1998 budget includes \$3.1 million in savings from streamlining activities.

*Privatizing specialized weather services.*—NOAA continues to encourage development of the private weather industry. NOAA has privatized specialized weather services including agriculture, fruit frost, fire weather for non-Federal non-wildfire land management, and specialized event forecasts. The on-going NWS modernization, resulting in new and expanded data sets, will support continuing opportunities for private companies to provide weather services.

*Expanding private sector ship support.*—NOAA is expanding the use of private contractors and cooperative arrangements with universities for ship support, and collecting information to assess private sector interest, capability and costs for meeting requirements. NOAA has completed contracts for hydrographic surveys, and will continue this effort during fiscal year 1997 with \$6 million in dedicated funding. The National Ocean Service plans to award contracts in fiscal year 1997 for surveys in the Gulf of Mexico to acquire hydrographic data for area approaches to Texas and Louisiana ports. These contracts should include a second year option. Additional smaller contracts are also planned. NOAA is also expanding the use of private sector contractors for data compilation and management services to improve the capability to prepare survey data for application to nautical charts.

*Transforming seafood inspection.*—The National Performance Review and the Administration's fiscal year 1998 budget request identifies the Seafood Inspection Program as one of nine organizations government-wide which, through legislation, will be converted into a performance-based organization (PBO). PBO's are discrete units of a department that will operate in a more business-like manner to better serve the needs of its customers while retaining its status as a Federal entity. Once designated, the PBO would be headed by a competitively hired Chief Operating Officer whose continued service would depend on successful achievement of performance goals. The PBO would remain a Federal entity.

*Improving fisheries management.*—In cooperation with the fishing industry, NOAA will implement access controls for 25 of 39 Fishery Management Plans by the end of fiscal year 1997. Under new legislative authorities in the Magnuson-Stevens Act, NOAA will work with stakeholders to establish user fees for individual fishing quotas in certain Alaskan fisheries.

*Streamlining regulations.*—NOAA is revising and streamlining 70 parts of the Code of Federal Regulations and eliminating 400 pages. This will reduce the reporting burden on the public, and reduce by 27 percent the reporting burden hours of the National Marine Fisheries Service.

#### BENEFITS OF PARTNERSHIP

NOAA builds partnerships with universities; international, federal, state and local entities; industries and businesses; and groups and individuals to address common needs and leverage resources. For example, the Fishery Management Councils and the Interstate Marine Fishery Commissions are examples of innovative partnerships bringing resource managers and fishing interests to the same table to address concerns. International leadership and collaboration helps to ensure the conservation of living marine resources, especially straddling fish stocks and endangered marine species. NOAA continues to work with local communities to formulate and oversee policies and programs to address fishery resource disasters in the Pacific Northwest, the Northeast, and the Gulf of Mexico. Lastly, NOAA provides technical assistance and financial support for the development and implementation of state coastal zone management plans through a unique state-federal partnership with coastal states.

NOAA depends strongly on universities to help accomplish science objectives in its mission areas. NOAA and university scientists collaborate on severe weather, climate, and fisheries research via a network of Joint and Cooperative Institutes at universities. NOAA also funds academic researchers through competitive, peer-reviewed programs, including the Climate and Global Change Program, Coastal Ocean Program, the National Estuarine Research Reserve System, the National Sea Grant College Program, the National Undersea Research Program, the Saltonstall-Kennedy grants program, and the Cooperative Program for Operational Meteorology Education and Training. NOAA has established a NOAA-University partnership to enhance collaboration with universities, and will host a series of workshops during 1997 with a broad range of both academic and other constituents to provide for constituent input and feedback into NOAA's strategic planning and budget formulation process.

Weather and climate services are provided to the public and industry through a unique partnership between the NWS and the private meteorological sector. The NWS provides forecasts and warnings for public safety, and the private sector promotes dissemination of forecasts and the tailoring of basic information for business uses. NOAA generally is seeking to reduce the costs of environmental data collection and to improve access to space-based and other environmental monitoring technologies by utilizing existing federal and international assets, and planning for the next generation of polar-orbiting satellites.

#### CONCLUSION

As I have discussed above, NOAA's fiscal year 1998 budget represents the most cost effective means to promote the Nation's environmental and economic advantage, while maintaining an appropriate balance among the environmental assessment and prediction and environmental stewardship needs of the Nation. We welcome the coming discussions on our goals, priorities, and operations with the Congress, our constituents and the public. We believe that our budget will be well received by all these groups because our budget represents appropriate levels of investment to generate major economic returns. Every day, in some way, every person in the U.S. is affected by the mission of NOAA. Our budget enables us to continue this service.

Thank you. If you have any questions, I am prepared to answer them at this time.

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#### BIOGRAPHICAL SKETCH OF D. JAMES BAKER

Dr. D. James Baker is Administrator of the National Oceanic and Atmospheric Administration (NOAA) and Under Secretary for Oceans and Atmosphere at the U.S. Department of Commerce. In this position, he is responsible for the National Weather Service; the National Environmental Satellite, Data, and Information Service; the National Marine Fisheries Service; the National Ocean Service; and NOAA's

Office of Oceanic and Atmospheric Research. He serves as the United States Commissioner to the International Whaling Commission.

He also serves as the Co-Chairman of the Committee on Environment and Natural Resources of the National Science and Technology Council and as an ex-officio member of the President's Council on Sustainable Development. He is Vice Chairman of the Space Committee of the Gore/Chernomyrdin Commission and Vice Chairman of the Science and Technology Committee of the U.S./South Africa Binational Commission. He is also the Chairman of Coastal America, and he served as Acting Chairman of the Council on Environmental Quality from November 1993 to February 1994.

He was previously President of Joint Oceanographic Institutions Incorporated, Dean of the College of Ocean and Fishery Sciences at the University of Washington, and on the faculties of Harvard University and the University of Rhode Island.

He is author of the book "Planet Earth—The View from Space," published by Harvard University Press in 1990, and he has written more than 80 articles on climate, oceanography, and space technology issues. He is a fellow of the American Meteorological Society and of the American Association for the Advancement of Science. He has served on numerous advisory committees for the Administration, the National Academy of Sciences, and various international bodies.

#### EAST COAST FLOUNDER AND STRIPED BASS CATCH QUOTA

Senator GREGG. Senator Faircloth has advised me he has an opening statement he would like to make.

Do you wish to make an opening statement?

Senator FAIRCLOTH. Yes, I do, Mr. Chairman.

Dr. Baker, I have been trading letters back and forth with Rollie Schmitten of the National Marine Fisheries Service about the treatment of the data that is used to calculate the flounder quota for the entire east coast. I do not know whether you are familiar with this or not—

Dr. BAKER. Yes, I am, Senator.

Senator FAIRCLOTH [continuing]. Or have worked on it. But, Mr. Chairman, I am here today to speak about this because the summer flounder spawning stock is at a record high, but the quotas are at an all-time low. They caught much of the 1997 quota in 10 days. There is such a bountiful supply of fish. There seems to be no correlation. The summer flounder catch in North Carolina averaged 11 million, close to 12 million pounds between 1976 and 1988. This was just North Carolina.

Your fisheries management plan went into effect in 1989. You first said 7 million and now you have dropped it to 3 million pounds per year. Now, they literally catch this quota in 10 days, there is such a bountiful supply of fish.

Of course, North Carolina has a major coastline and is a big fishery State. So, just literally hundreds, hundreds of fishing boats run out for 8 to 10 days, the season's over, back in. I thoroughly believe that the summer flounder stock assessment is seriously flawed. Now, Mr. Schmitten has been cooperative, and he has met and talked, but nothing has happened.

Also, the striped bass population on the east coast raises quota issues in that the population is fully recovered. In fact, there is even a question that the population of striped bass has reached such a level that they are interfering with the reproduction of other species, such as shad. Yet, there is a very, very limited taking you are allowing. Of course, an increasing amount of the seafood in this country is coming from South America.

The President has requested a \$25 million increase, Mr. Chairman. This will benefit NMFS.

Mr. Chairman, I intend to oppose funding at the levels they have suggested when the Commerce budget is addressed by the Senate Appropriations Committee, unless someone can assure me that NMFS has a plan to resolve the enormous gap between the stock assessments for the quotas, what those people who are supposed to know believe it is, and what your people are saying it is.

I want to ensure that the quotas are reflective of the growing stock for both flounder and bass. And in an effort to promote this, you will get some technical questions. I would like for you to respond to these questions prior to a full committee markup. And you will be given them today.

I expect the markup will be probably in early June, but I will get those questions to you and I would look forward to an answer and a chance to discuss them with you. Mr. Chairman, I thank you.

Senator GREGG. Thank you, Senator Faircloth.  
Senator Mikulski.

#### PREPARED STATEMENT OF SENATOR MIKULSKI

Senator MIKULSKI. Mr. Chairman, I have a opening statement but I ask unanimous consent that it go into the record, please?

Senator GREGG. Without objection.  
[The statement follows:]

#### PREPARED STATEMENT OF SENATOR BARBARA A. MIKULSKI

Thank you Mr. Chairman, I want to welcome Dr. Baker today and I look forward to hearing his testimony.

Mr. Chairman, NOAA is one our most important federal agencies. NOAA is responsible for predicting our weather, protecting our oceans and coastal areas and promoting critical scientific research in atmospheric and environmental science.

As the recent flooding in North Dakota has shown us, accurate, reliable weather prediction is absolutely critical. My own State of Maryland has experienced the destruction of flooding and our thoughts and prayers are with the people of North Dakota and the entire Upper Midwest.

Thanks in part to accurate weather predictions, there has been minimal loss of life—directly related to storm and hurricanes despite widespread damage to property. Early warnings of hurricanes have minimized loss of life and provide a critical window to allow communities time to prepare for severe storms.

It's simple, NOAA saves lives.

We cannot allow NOAA's infrastructure to deteriorate. NOAA and the National Weather Service must have state of the art equipment and facilities to meet their mission and give all us the best possible weather prediction capability.

But NOAA also helps understand the dynamics of weather through studying the atmosphere. Understanding how our atmosphere works is also critical to protecting lives and property—the more we know, the better we can prepare. As this nation continues to cope with non-stop natural disasters, we need to know if this is a short term phenomena or part of a long term change in our weather and atmosphere.

Because of this, I was disturbed when NOAA announced staff reductions at the Hurricane and Storm Centers. However, I understand NOAA has reconsidered its earlier decision and will not cut the Hurricane and Storm centers. While I applaud this decision, I am still disturbed about the reductions at NOAA's Silver Spring office. I believe any personnel or budget cuts must be fully justified, proportional and fair. No single office or division should carry the burden for an entire agency.

I note the important role NOAA plays in managing our natural resources. In Maryland NOAA is a critical partner in the Chesapeake Bay Program through their work on living resources such as crabs, oysters and the Coastal Zone Management Program.

Finding ways to bring back our oysters and crabs will help bring back the jobs that have been lost. We need answers as to why these living resources have been declining and we need a plan to bring them back. Our Chesapeake Bay watermen depend on it.

So, as you can see, Mr. Chairman, I am a big NOAA supporter. NOAA saves lives, saves property, helps us understand the world around us and brings back jobs in our fishing and coastal communities. I look forward to working with you.

#### NATIONAL HURRICANE CENTER STAFFING

Senator MIKULSKI. Mr. Chairman, I am delighted about the fact that NOAA has its headquarters in the State of Maryland and, of course, plays such an important role in our Nation. We look forward to working with you on so many of the funding issues. But one of the issues that really affects Maryland very directly, Dr. Baker, is the proposed cuts to the Hurricane Prediction Center. As you know, hurricanes have a devastating effect on the Eastern Shore. Our constituents in Maryland, Delaware, and Virginia are deeply concerned whether there will be adequate hurricane warnings to them. The last 3 years we have been hit by more hurricanes than in the previous 10.

My question to you, Dr. Baker, is what is the status of adequate staffing for the Prediction Center; and No. 2, what can you tell us will be available for the hurricane season?

Senator Sarbanes and I, of course, feel very strongly about this and would like to work with you on this.

Dr. BAKER. Would you like me to answer at this point?

Senator MIKULSKI. Yes.

Dr. BAKER. Thank you, Senator Mikulski.

We share your concern that the Weather Service continue to provide the public adequate warning and forecast services. This is at the very top of our priorities. I have made the modernization of the Weather Service my No. 1 priority since I have been in NOAA which is since the beginning of the administration.

This past year, we had to take a number of cuts, including some congressionally mandated cuts, and I asked the Weather Service to go back and find ways that they could do this without jeopardizing their warning services. They had to take some cuts in the Tropical Prediction Center [TPC], which includes the hurricane center and some of our other centers. None of those cuts were, in fact, involved with the severe weather warning system.

However, there was a lot of public concern about reductions to the TPC. We listened to that public concern and I talked to Secretary Daley. Thanks to the fact that we were able to change our forward-funding stream on satellites, we were able to release some money in fiscal year 1997. Due to these available funds, we have announced that we will not take those reductions in personnel that we had originally proposed at the hurricane center. We will not be able to fill some of the vacancies but we will not be taking additional reductions in personnel. So, the hurricane center will be at exactly the same level of staffing this year as it was last year. And we will continue to monitor its performance.

Senator MIKULSKI. So, we will have adequate staff and they will continue to be a priority on the warnings necessary for coastal protection and coastal evacuation, if necessary?

Dr. BAKER. Absolutely.

## CHESAPEAKE BAY BLUE CRAB STOCK ASSESSMENT

Senator MIKULSKI. The other is a question that I would like to raise on species. I know our cousin from Carolina has raised his concerns about flounder. I will be on the Eastern Shore this weekend, actually on a fishing trip with some people I do every year. Usually this time it is only blues that are available, so, we will, even if I catch a striped bass they will toss it back.

Senator LAUTENBERG. What size?

Senator MIKULSKI. Well, let us just say I hope it is big enough for me to—

Senator LAUTENBERG. To be a keeper.

Senator MIKULSKI [continuing]. Well, small enough for me to reel it in, big enough for me to brag about.

But one of the other species that we are deeply concerned about is the Chesapeake Bay blue crab. And, as you know, Governor Glendening and us are trying to do really a species management plan. Crucial to this is the winter dredge survey that NOAA does. We have been advised it is one of the most important techniques that we can do about species prediction and species management. There is rumor that NOAA intends to cut the funding for the winter dredge survey because they do not regard it as research. Whatever we call it, the winter dredge survey is crucial to us. Could you tell us what your plans are for the winter dredge survey and the blue crabs in the bay?

Dr. BAKER. Let me ask the expert on that, Nancy Foster, who is our Deputy Director of Fisheries.

Dr. FOSTER. I cannot specifically answer the question about the winter dredge survey, but I can tell you that we have no plans to cut any blue crab work in the bay.

Senator MIKULSKI. Well, I might say, Dr. Baker, that the work of NOAA on the blue crab has been great. The winter dredge survey, the Blue Crab Advisory Commission, and for us—the blue crabs here sparked a book called “Beautiful Swimmer”—but for us, this is absolutely crucial to the jobs of the watermen industry where those jobs are shrinking and we just do not want an endangered species to be both the blue crab and the watermen. So, we would like to work with you to make sure that that tool is in place and we would like to thank you for it.

## NOAA FACILITY AT GODDARD SPACE FLIGHT CENTER

The other question that I have goes to Earth observatory. Mr. Chairman, you might be interested to know as the ranking member on the committee that looks at NASA that one of the crucial inter-agency cooperative agreements and arrangements has been NOAA/NASA. You have talked about forward funding in some of the satellites but I understand you want to move a facility that you have in Suitland to Goddard. What is that all about?

Dr. BAKER. Well, Senator, we have two very important facilities in Suitland and in Camp Springs. One is the headquarters of our satellite operations. The other one is our National Meteorological Center where we do the basic forecasts, the National Center for Environmental Prediction.

Senator FAIRCLOTH. What did you say?

Dr. BAKER. One facility is in Camp Springs, MD, and the other facility is in Suitland, MD.

Senator FAIRCLOTH. Thank you.

Dr. BAKER. We have to vacate both of these buildings because the lease is running out and the buildings are old. They are really not going to be suitable after roughly the year 2000. So, we looked for a combination of things. The lowest cost option for us to house these people and the best possible synergy. And interestingly enough, because of the availability of Federal land at the Goddard Space Flight Center in Greenbelt, MD, we were able to find an arrangement that would both be the lowest cost option for us to find a facility, and to build synergy with NASA. We have worked very closely with NASA on their Earth observing program and our operational satellite program. We do a lot of joint things.

In fact, NASA, NOAA, and the Department of Defense are the three partners in the converged meteorological system that is saving the country over \$1 billion over the life of that program. By putting everybody together, we are going to have a synergy of activity that will allow us both to do new things but to find ways to eliminate waste and duplication. It is going to be, I think, a very good way to move forward with the Federal program.

Senator GREGG. So, it is staying in Maryland.

Senator MIKULSKI. Well, it is not only to that it is staying in Maryland. But, Mr. Chairman, you know, sometimes I have not always supported the fact that agencies are built in Maryland if we do not think we are going to get value for it. And there was some talk about moving EPA to Maryland. We felt it should stay in the Nation's Capital.

Senator GREGG. Well, I think there was talk about moving this to New Hampshire.

Senator MIKULSKI. For which I would think would have no value. [Laughter.]

Senator GREGG. Nicer weather.

Senator MIKULSKI. But I think really what we are trying to do, and I think the committee would find this interesting, where there is already Federal ownership of land, rather than buying land, let us get value for what we need in laboratory or management space. FDA, we hope to put on a base that has been closed at White Oak. And that, here, I know that the space is dated and out of use. And there are many questions that we would like to have on fisheries management, satellite and Earth observatory, but I know that my colleagues have many questions. So, we look forward to working with you. But, Mr. Chairman, this agency, whether it is in Vermont or Maryland or New Hampshire, is really one of our main interests.

Senator GREGG. Well, it is not going to be in Vermont. They do not even have a sea coast. But many think it is a good agency.

Senator MIKULSKI. That has not stopped the Senator before.

Senator GREGG. Senator Faircloth, do you have any questions relative to your situation? Did you want Dr. Baker to respond to your opening statement in any way?

Senator FAIRCLOTH. No, no; unless he wants to. I would be glad to hear it. I was going to ask a few questions but if he has got a response I would be delighted to hear it.

## FISHERIES STOCK ASSESSMENT ACCURACY

Dr. BAKER. Well, Senator, I just want to tell you we take this problem very seriously. The whole issue of accurate stock assessment is one that is very important to us. And I recognize your concern there and we will get back to you with answers on all of that. And I want you to know that we will work very closely with you on this.

Senator FAIRCLOTH. Well, I thank you and I look forward to it. You know, Senator Lautenberg, Senator Mikulski, all of their fishermen are telling the same thing. We have a 5½-inch opening in the nets and they are catching their quotas, literally the year's quotas up in 10 days.

Senator GREGG. Do you have any other questions?

Senator FAIRCLOTH. No, Mr. Chairman.

Senator GREGG. Senator Lautenberg.

## COMMUNITY RIGHT TO KNOW

Senator LAUTENBERG. Thank you, Mr. Chairman.

Welcome, Dr. Baker. Your Department of Government, I think, is a very important one, and I am going to support the President's budget. I am pleased with the overall list of priorities. I am co-chairman of The Coastal Coalition and, of course, am very interested in your programs. New Jersey has the coastline and we have lots of fragility along that coastline. And there are all kinds of disruptions in fishing—some are caused by pollution, overcrowding, and so forth—but we are interested in the reliable assessment of what the stocks are and what is happening with the fishermen and their opportunity to make a living. And we see that all the way up and down the east coast, there are problems of people making investments in larger, more efficient craft to catch the fish and then finding out that they are sweeping it so clean in such a short time that others are going out of business alongside them.

And we have to continue to invest in research and our understanding as to what we have got there. Many of your programs are ones that I am very interested in, and Senator Mikulski and I share similar interests.

In the advanced warning programs, notice of violent weather not only can save lots of lives but lots of money as well. It is very important that it continue. The National Weather Service—there is excellent work done there. We hope that we continue to do the research there. And thanks for the work done by the NOAA lab in Princeton, the work that they are doing on global climate change and the ozone. Of course, as former chairman, now ranking member of the Superfund Subcommittee, I am interested in your assessment on the natural resources damage that might ensue from these contaminated sites. I am the author of the community right to know law and I was pleased to see that the President added a series of chemicals to that.

But I am interested in knowing about the right to know, for swimmers, and what we can do to make sure that the conditions are clearly understood. There are diseases that are transmitted through exposure in the water and we want to continue those programs.

I am going to submit some questions in writing to you, but I am curious that there is constant debate about this beach or water quality testing. And, again, I will quote the swimmers right to know. Everybody has a right to know whatever they are doing. NOAA is requesting funding for a new right to know program, for swimmers at our Nation's beaches. And what would you be doing under this program?

#### COASTAL MONITORING

Dr. BAKER. Well, Senator Lautenberg, this is a part of our activity that was proposed by the President in his new initiative. We call it expand every American's right to know about toxic pollution. Our particular part of that was to provide an additional \$2.9 million to our coastal monitoring and environmental assessment program which expands and improves our coastal monitoring program. So that is additional funding for better coastal monitoring.

We are going to collect more information on toxins in water, sediments, and organisms in coastal areas and then provide that information to coastal communities. Our coastal centers, we have one in Charleston and one in New Hampshire, will also be working on development of state-of-the-art coastal pollution monitoring technology.

It will expand our existing programs of monitoring the sediments, toxins, and organisms in coastal waters. The program already goes on in Rutgers, which is a very important program for us.

Senator LAUTENBERG. Very important.

Mr. Chairman, did you hear that one of those locations is in New Hampshire?

Senator GREGG. I am surprised.

#### STATUS OF STOCK ASSESSMENT

Senator LAUTENBERG. It is at the top of the mount.

On April 16, just a short time ago, I wrote to you concerning a proposal by Dr. Powell of the Haskin Shellfish Research Lab at Rutgers. And I understand that a survey be undertaken, dealing with our Atlantic surf clams and quahogs, which would provide some significant data which might assist you and the Mid-Atlantic Fisheries Management Council, in setting reasonable harvest quotas; again, a stock assessment. What is the status of that program?

Dr. BAKER. Let me ask the Fisheries Director, Nancy, do you have an answer on that?

Dr. FOSTER. Yes.

Dr. BAKER. Nancy Foster.

Dr. FOSTER. We are doing a stock assessment that should be out sometime next summer that will give the latest information.

Senator LAUTENBERG. OK, and thank you, Dr. Baker. We have some other questions that we will submit and we will look for your responses. And, once again, my compliments for having an excellent organization, good programs, and I hope that we will continue to fund you at levels that we can all get the response that we like to get when we have to call on the Weather Service to get information in advance of disaster.

Dr. BAKER. Thank you.

Senator BUMPERS. Mr. Chairman, I do not have any questions. I just want to say I think NOAA does a great job and they have always been very accommodating and I am a Johnny-One-Note with regard to the importance of the Fort Smith weather station, and I will submit a question in writing on that and not take up the committee's time today. And, maybe you can come by the office sometime, Dr. Baker, and visit with us.

Dr. BAKER. I would like to do that. The State of Arkansas provides lots of tornadoes for us to study.

Senator BUMPERS. We provide plenty of tornadoes. All we want you to do is tell us when they are coming.

Dr. BAKER. You gave us tornadoes and you gave us the Director of our Weather Service, as you know.

Senator BUMPERS. That is right.

Dr. BAKER. So, the State is very important to us.

Senator BUMPERS. We have really been particularly hard hit the last 2 years and it has cost hundreds of millions of dollars. Not to compare it with the Grand Forks, but certainly on a scale similar to it.

Senator GREGG. Senator Stevens.

#### NOAA CORPS DISESTABLISHMENT

Senator STEVENS. Thank you, Mr. Chairman.

Dr. Baker, I do thank you for taking the steps to release that million dollars to help with the research in the Bering Sea, including the Russian zone. I am grateful for that. An organization called The Military Coalition has suggested that no cost savings will be realized from the elimination of the NOAA corps.

#### NOAA CORPS

I believe you told us some time ago that some of the uniformed corps would be absorbed by NOAA but is there any way to refute their claim that there would be no savings if the corps is eliminated?

Dr. BAKER. Senator Stevens, that is a very good question. There is an initial cost for us to transition those personnel who have military retirement and military careers into a civilian status. There is an initial cost. We save that cost then over the long term. In the long term, but we are talking 5 to 10 years, we begin to show a savings.

We also believe that over the course of this process of transitioning we will end up with fewer people in those positions than we would have had, had the NOAA corps been in place. We also save money in that way.

Senator STEVENS. Well, let me do this, Mr. Chairman, if I may, I would like to put in the record the letter we received at the committee from The Military Coalition. If you have any further comments once you see it, I would appreciate it if you would put them in the record.

[The information follows:]

THE MILITARY COALITION,  
*Alexandria, Virginia, April 21, 1997.*

Honorable TED STEVENS,  
*Commerce, Justice, State and Judiciary Subcommittee, Senate Appropriations Committee, Washington, D.C.*

DEAR SENATOR STEVENS: The Military Coalition, a consortium of nationally prominent military and veterans organizations, representing more than 5 million members of the seven uniformed services plus their families and survivors, is writing regarding the Commerce, Justice, State and Judiciary Subcommittee's consideration of fiscal year 1998 appropriations for the National Oceanic and Atmospheric Administration (NOAA), scheduled for April 24, 1997. We want to express our strong opposition to the administration's expected proposal to disestablish the NOAA Corps of Commissioned Officers.

Elimination of the NOAA Corps must be based either on sound economic or programmatic grounds. The reality is that no savings would be realized by dissolving the NOAA Corps. Furthermore, elimination of the NOAA Corps as a uniformed service may have unintended consequences that are not in the national interest.

The original proposal to eliminate the NOAA Corps—put forth as a recommendation in the National Performance Review—was not based on a thorough economic analysis. In this regard, the GAO report released in October 1996 (GAO-GGD-97-10, "Federal Personnel Issues: Issues on the Need for NOAA's Commissioned Corps") found that there was only a 2 percent cost differential between the NOAA Corps and an equivalent cadre of civil servants. In making this determination, however, the GAO report did not consider moving costs or the cost of overtime that would have to be paid to civilian workers. If these costs were to be included, the alleged cost savings to be achieved through elimination of the NOAA Corps would be non-existent.

In addition, the ostensible "cost" of eliminating the NOAA Corps is only \$6 million more than would have to be funded for the retired pay line item (\$8 million in 1997) as included in the NOAA budget. The actual cost, however, will be at least \$14 million, plus the retired pay for current retirees and those who would be forced to retire if the Corps is eliminated. This is because the retirement for NOAA Corps retirees and those forced to retire is an unfunded liability and does not appear in the proposed fiscal year 1998 NOAA budget. As a consequence, in addition to the one-time elimination costs, the actual cost to the retirement account is estimated to be well in excess of \$10 million annually.

Since dissolution was first proposed, the NOAA Corps has downsized significantly. What will be lost, if the proposal to eliminate the NOAA Corps is pursued, is the dedicated uniformed scientists and engineers who provide the flexibility, skills and response capability to this nation for operating NOAA's ships.

A recent example is the NOAA Ship *Rude*, which provided crucial survey support in response to the TWA Flight 800 recovery effort. The *Rude*, managed and operated by NOAA Corps officers, located the crash debris within days. The NOAA officers were the critical interface, providing wreck data to Navy divers and members of the National Transportation Safety Board. The NOAA Corps' role in the TWA 800 effort was specifically recognized by Secretary Peña at a United States Coast Guard Awards Ceremony with a Public Service Commendation and by the Department of Commerce, with the Department's highest award—the Commerce Medal.

Other critical capabilities that will be lost are the aircraft pilots who penetrate hurricanes at low-altitudes in support of hurricane research and the nation's only group of federal hydrographers, whose job is to manage the collection of hydrographic data for the nation's nautical charts. NOAA's nautical charts are highly regarded by the maritime community. The loss of this expertise could jeopardize the quality of these charts, which enhance the nation's economy and serve to prevent the catastrophic environmental damage that could result from the grounding of an oil tanker on an uncharted rock. In addition, if the NOAA Corps were to be dissolved, there remains the issue of tort liability in the national charting program and the associated cost increases, which have not been determined.

The Military Coalition urges you to carefully review all the consequences of disestablishing the NOAA Corps. We believe that if you objectively review the facts, you will agree that disbanding the NOAA Corps is no longer supportable or in the national interest. It will be most unfortunate should the nation lose this valuable group of men and women who have dedicated their careers to serving our nation. Accordingly, we recommend that you give the issues raised here serious and careful

consideration as the Subcommittee takes up the NOAA appropriations bill for fiscal year 1998.

Sincerely,

THE MILITARY COALITION.

#### NAUTICAL CHARTING ACTIVITY IN ALASKA

Senator STEVENS. Now, NOAA currently operates eight fisheries research vessels. The research vessel *Miller Freeman* operates primarily off my State. The others are operating through the rest of the country or the coastline off of the rest of the country. One-half the coastline is off our State and more than one-half of the fish caught by the United States, in terms of volume and value are landed in Alaska. You have seven NOAA vessels for fisheries research and none of them are off my State. I understand that there are some problems with regard to financing, but none of them are stationed in our State.

I understand that the hydrographic vessel *Rainier* operates in Alaska part time. But I have received complaints from our maritime industry and the fishing industry that we seem to be forgotten as far as the allocation of time from the NOAA hydrographic fleet as well.

Now, you may want to think about that, but it is a serious matter for us, particularly with regard to the mapping. Where the shoals are located, particularly, is of great concern.

Is there any reason why there is not an increased tempo off of Alaska as compared to the rest of the country?

Dr. BAKER. Well, Senator Stevens, I think I would have to get back to you and analyze that, so we could give you a full answer. We are very concerned also about having adequate mapping and charting, both in terms of doing the work, having the equipment and ships to do it. So, we share that concern.

Senator STEVENS. I understand allocations that we suffer as far as Alaska is concerned based upon population but the work of these vessels has no relationship to the population. And if it is really related to the area covered by the vessels, we do not understand why there are so many out there in the rest of the United States and none in Alaska. I would appreciate your response, if you would.

[The information follows:]

#### LACK OF INCREASED TEMPO OFF OF ALASKA COMPARED TO THE REST OF THE COUNTRY

Currently the National Oceanic and Atmospheric Administration's (NOAA's) fisheries research vessels *Miller Freeman* and *John N. Cobb* spend most of their operating time in Alaskan waters. These two ships combined operate around 420 days per year, or over one-fifth of the total of 2,000 days per year for all NOAA's fisheries research vessels. In addition, NOAA charts over 500 days per year on fishing vessels in Alaskan waters where laboratories and multi-purpose vessel support are not required. The ship time NOAA currently uses in Alaskan waters for fisheries stock assessment and research is well over one-third of the total fisheries related ship time NOAA uses for all areas. Even with this amount of ship time dedicated to Alaskan waters, to meet the requirements of the Magnuson-Stevens Act, NOAA will need additional ship support.

For hydrography, NOAA's survey vessel *Rainier* operates in Alaskan waters 220 days per year. The *Rainier* provides one-third of the total NOAA ship time dedicated to hydrography and is NOAA's most capable and effective survey platform with six survey launches. NOAA needs to increase the rate of hydrographic surveying in Alaskan waters and is exploring options to do so. NOAA also needs the ability to

procure modern multibeam survey systems. One option being explored is the charter back of *Rainier's* sister ship, the *Fairweather*, or an alternate vessel using a contract crew and NOAA hydrographers. This would effectively double NOAA's data acquisition rate in Alaskan waters and reduce significantly the time required to complete surveys of critical areas.

#### HALIBUT AND SABLE FISH INDIVIDUAL FISHING QUOTAS

Senator STEVENS. I asked you a question at the Commerce Committee hearing earlier this year concerning the proposed increase in 57 full-time equivalents. We have been told there were 24 National Marine Fishery Service enforcement personnel in the two new IFQ fisheries in Alaska in 1995 and there are only eight now, notwithstanding the fact that there is just a staggering increase in workload brought about by the IFQ program.

Your people briefed my staff last week about temporary enforcement people from the lower 48 but it does seem there ought to be a more permanent plan if we are going to have this IFQ program in effect, particularly since there is a test period of just 2 years now under the Magnuson-Stevens Act.

We would like to have some effort made to provide the personnel to ensure that the test period is a valid one in terms of enforcement and recognition of violations to see really how the test program works. I hope you agree that this is not unreasonable. This is the major IFQ program we are going to test in the 2-year period.

I would hope you would find some way—in the halibut/sablefish IFQ fishery off Alaska—to monitor that so that the test period really reflects the type of enforcement and administrative review that it should if we are going to use that as a judge to see whether we go with IFQ's, not only in Alaska but throughout the rest of the country.

Dr. BAKER. Well, the halibut/sablefish IFQ has been, I think, one of the very successful tools that we have in fisheries management. We are very concerned that we have adequate enforcement which is one of the keys to making IFQ's work. I was just briefed on this by the staff and I agreed that we would find a way to try to alleviate that problem.

#### FACILITIES MAINTENANCE REQUIREMENTS

Senator STEVENS. The last thing is one question I am asking all of the agencies. We have no way to adequately determine the backlog of maintenance, repair, and modernization. I think it is an enormous sword of Damocles hanging over the executive branch as a whole. Have you ever ascertained that for NOAA?

Dr. BAKER. Yes, sir; we have been looking into that and it is an enormous issue. We had some buildings in fisheries that go back to 1880 and right now our estimate is \$28 million. Twenty-eight million dollar backlog on facilities maintenance and repair. But we do have a list we have been looking at.

Senator STEVENS. But that is just facilities.

Dr. BAKER. Yes.

Senator STEVENS. I am talking about ships, vehicles, test systems, the equipment in the laboratories. Are we really keeping up with new technology as far as your laboratories are concerned? I would like to know what is the backlog? If you had the money to

catch up and say that you have a state-of-the-art NOAA, what would it cost you to catch up?

Dr. BAKER. I think in some areas we do but in many areas we do not. And we can provide that information for you.

[The information follows:]

*Ships.*—The overall condition of NOAA's ships has improved considerably over the past several years due mostly to the funds provided through the Fleet Maintenance and Planning account, and because some ships that were in poor condition were removed from services. Ships such as the *Oregon II*, *Miller Freeman*, and *David Starr Jordan* continue to need increased attention and NOAA is planning to contract additional repairs to these ships over the next few years. Additionally, there are some items remaining on the other vessels which should be taken care of to ensure continued vessel reliability.

Historically, NOAA has requested \$6 million for routine maintenance of NOAA's fleet. This amount covers fleet maintenance at a minimal level and will not cover inflationary costs or emergency repairs in the future.

Excluding the \$4.5 million requested in the fiscal year 1998 budget for *Miller Freeman* repairs, there is approximately \$13 million in backlogged repairs for NOAA ships which should be addressed to ensure vessel reliability stays at high levels for the next several years.

*Facilities.*—The Capital Improvements Program (CIP) project backlog is currently estimated to be approximately \$28.4 million (215 projects). The nature and scope of projects included in the backlog vary greatly, from small plumbing or electrical problems, through large systems replacements such as roofs, heating and air conditioning, and sanitation, to major renovation projects necessary to maintain a facility's viability. The cost estimates for the projects vary as well, with some costing over \$2 million, while some of the smaller projects are expected to cost as little as \$3,000 to \$5,000. Obviously, in order to eliminate the CIP project backlog funding would be necessary. In addition, funds to cover additional projects as they are identified would be needed. This growth is currently estimated around \$3.5 million per year. Assuming that it would take 4 years, at least, to eliminate the backlog, we would expect to discover additional projects with an estimated cost of \$10 million to \$15 million during that time.

The NOAA staff charged with the responsibility for designing and overseeing CIP projects are the real property specialists and facilities engineers in the field. These staff are also responsible for most major "special" facilities projects along with performing a significant number of facilities tasks directly for the line offices they serve. At present, NOAA devotes roughly 4 to 5 FTE of this field staff to the CIP. At this level, it is estimated that staff could manage approximately \$3 million to \$5 million of projects annually, with some variance due to size and complexity of the individual projects. In order to eliminate the entire backlog in four years, including new projects that come about in that time frame, the program would need an infusion of some \$8 million to \$10 million each year and 8 to 10 new engineering FTE, or 4 to 6 new engineering FTE and substantial contract Architecture and Engineering support. This assumes that the "other-than-CIP" workload of the field staff remains fairly constant.

Senator STEVENS. I do not mean to spend a lot of money researching it, but I would like to have at least some general recognition of how much it is. You do not have jurisdiction over any facilities like dams or facilities of that type. We are doing a survey of dams and highway bridges and what not.

Dr. BAKER. I do not think we have jurisdiction over dams, highways, and bridges. We have lots of laboratories and fishing facilities and satellites.

Senator STEVENS. What is the age of your laboratories?

Dr. BAKER. Well, as I say, I think we have one that goes all the way to 1880 and we have a lot of our laboratories that were built in the 1940's and 1950's. We have a number of laboratories, you know, some of which we are looking to consolidate and improve. We have the full range I would say.

Senator STEVENS. I just received today what you call the "National Fisheries Laboratory Consolidation Study Report." I have not

seen it before. It was just this minute delivered to me. I will look through this, but I would appreciate it if you would just give—

Dr. BAKER. There is a lot of that information in there.

Senator STEVENS [continuing]. Give us your guidance about what kind of a backlog you have at NOAA.

Dr. BAKER. We will, Senator.

Senator STEVENS. Thank you.

#### FLEET MAINTENANCE

Senator HOLLINGS. Let me get right to the point. Here we have in the supplemental, Mr. Chairman, \$10 million for salmon hatcheries and yet they cut out the ship maintenance. The *John Cobb*, one ship you have up in Alaska, is 47 years old. We have paid billions for satellite and weather stations and equipment and nothing for the maintenance of the NOAA fleet. How do you explain that?

Dr. BAKER. Well, this is not a good situation—

Senator HOLLINGS. You put \$10 million in there just for the fish, but nothing to really do your job of studying these fish. And then you have a silly inspector general over there who tells us to privatize it. Suppose we went over to Maryland and said, we have a lot of good pharmaceutical companies, let us just privatize NIH, the pharmaceutical companies can do it, they have competent people, boom, boom, boom, we can do it much cheaper that way. You would be out of your mind.

Senator MIKULSKI. Right. [Laughter.]

Senator HOLLINGS. And that is it exactly. Let us get with the program here.

Senator STEVENS. Would you translate that?

Senator HOLLINGS. Privatization would be much cheaper, that is what they all say. They say privatize as if it is some kind of rhythm they have or some political call, in 20 second sound bites. But that is nonsense. We are here in the real world, and we have to provide for this program and do a good job, and we do not have to make a profit in NOAA. We can get the ships from the Navy, some of them, and beef them up. We can actually do it more economically at the governmental level. That is why you are not going to save any on doing away with the NOAA corps. You have to hedge in your answers and say, well, you know, in the out-years, et cetera. That is 10 years from now and you will be gone and I will be gone then. [Laughter.]

I mean come on. We have to get real and start putting the money in so this Government can operate efficiently and effectively, and we are not operating this way with the NOAA fleet.

Dr. BAKER. The NOAA fleet is a real crisis for us, Senator. It is a real problem. If we do not get support for the NOAA fleet, both in the administration and the Congress, we will not have a NOAA. And this is a point I have made many times. I am very concerned about it.

Senator HOLLINGS. You have made this point?

Dr. BAKER. I have.

Senator HOLLINGS. And they just do not listen?

This means somebody is making better points on salmon. [Laughter.]

Senator STEVENS. Well, that salmon, Senator Hollings, those hatcheries on the Columbia River help to meet U.S. treaty obligations.

Senator HOLLINGS. Well, we ought to have a treaty to build a NOAA fleet.

Senator STEVENS. We ought to have a treaty to make sure if there are 15 ships operating along one-half of the coastline of the United States, there ought to be at least one in the other one-half.

Senator HOLLINGS. Well, the entire ocean is off of South Carolina's coast. [Laughter.]

We really are concerned but I appreciate the chairman yielding.  
Senator GREGG. Thank you, sir.

#### OCEANIC RESEARCH

Senator HOLLINGS. Well, thank you very much, Mr. Chairman, I apologize for being late. I had to be at another meeting. Dr. Baker, we have to do something about the NOAA fleet and not listen to this call that really makes you look incompetent and makes the Government look incompetent.

There is not any question about it, not with respect to the oceans. You said you were going to emphasize the importance of the oceans in taking over, and exactly how are you doing this? Tell the committee how you foresee changing some of the programs or increasing some of the programs. What do you have in mind?

#### NATIONAL OCEAN SERVICE

Dr. BAKER. Well, Senator, we have been looking both internal to NOAA and across the Federal Government for ways in which we can find some better emphasis on ocean programs in general. One of the things we are looking at, at the moment, is trying to enhance the effectiveness of our National Ocean Service, which is the central oceans function in NOAA. We are looking at ways that we can improve the organization and capabilities of that part of NOAA. I have also called together all of the agencies who are involved in oceans matters, called the Oceans Principals Group, for the Federal Government, and we had a meeting last week. We agreed that we would start to meet quarterly both to address ways to enhance the ocean during the Year of the Ocean, which was announced for 1998, and also to find ways that we can better work together to have a better emphasis on coastal ocean activities, the ocean's role in climate, the ocean's role in fisheries—all of these areas. I think that it is an opportunity for us to do a better job than we have done before.

Senator HOLLINGS. I think so. I think perhaps we have to get the public involved as well as the Members here in Congress in re-instituting the Stratton Commission. I have been working on it and I would appreciate your help too so we can get the business leadership as well as the scientific leadership involved.

Dr. BAKER. I think private industry is very interested and I think your idea of a Stratton Commission is right on target and we are fully supportive of that.

## CAPITAL ASSETS ACQUISITION

Senator HOLLINGS. I understand your budget is broken down in order to show that there is an increase, but the truth of the matter is we are obligated for all of these things. How do you feel about this capital budget arrangement under Frank Raines?

Dr. BAKER. Well, Senator, we had been concerned, as you pointed out to me several years ago, about the cost of big systems, satellites, and Weather Service systems and so on. And if we did not account for those with long-term agreements we had the danger that the costs of the systems would cut into the ongoing programs. The point of this "Capital assets acquisition" account is to get an agreement from OMB that they understand about the out-year costs of big systems so that they know the satellites will go up and will go down. We do not have to have that cost come out of our programs.

So, the first step is a recognition by OMB that we do, in fact, have large fluctuating costs for systems and this must be accounted for rather than simply looking at it year to year, there is a long-term look.

This, I think, is a very important point. The second one is to aggregate those into one part of our budget which will be a fluctuating budget and then have the other part of our budget be the program budget. But it is a first step for OMB to recognize this. This is something I think Congress has recognized for a long time.

Senator HOLLINGS. Does it take away from your flexibility? In other words, like the hurricane center down in Miami, you and the chairman had to get together and adjust some moneys and everything else in order to keep everybody up and running down there in the Miami Hurricane Center. Does this capital budget approach take away from your flexibility?

Dr. BAKER. No, sir; we still have transfer authority among the accounts. That is the way we had worked it out.

## ADVANCED WEATHER INTERACTIVE PROCESSING SYSTEM

Senator HOLLINGS. But my point is, sometimes you have to transfer from the capital budget. Well, what about AWIPS, the advanced weather interactive processing system? Last year, NOAA said that the program was in real trouble—that the contractor could not produce the software.

## STATUS ON AWIPS

And since that time, I think it has gone through major changes. Can you give the committee an update on AWIPS?

Dr. BAKER. Yes, sir; I have been following this very closely and personally because it is both a big software and hardware acquisition for NOAA. We did go through some changes last year. We were able to replace some of the planned software with software which we had built in our own forecast systems laboratory. We had started this as a risk-reduction effort and we have been able to use that instead of what had been proposed by the contractor.

We have a limited deployment of the AWIPS system now that software and hardware is out around the country and it is already working very well. In fact, during a big snowstorm last year in

Kansas City, we found that the AWIPS system brings together all of the data from the satellites, radars, and the computer systems all on one screen. The forecasters were able to forecast the total amount of snow during the time that the snowstorm was taking place because of the AWIPS system. We have 16 of those out there. We are putting out some more in a limited deployment system this year.

I believe that we understand what this program will cost. In fact, I have agreed that we will have a total cap on the program, \$550 million, up through the final build of this system.

Senator HOLLINGS. You are maintaining that \$550 million?

Dr. BAKER. Absolutely.

Senator GREGG. On that point, why do you keep using this software company? I mean, they just do not appear to be producing very well.

Dr. BAKER. Well, it is hard to find big companies that can handle the kind of software development that we have and the company that we have, PRC, is one of the companies that is competent in doing this.

What is important, as you work with these systems development companies, is that you stay very close to the development and that you have a system; whereby, there is a build, and there is a test and then there is a build and then there is a test. If you try to have everything built and then wait until the end, it does not work. There has to be an integrated process.

Senator GREGG. Well, is the software performing adequately now?

Dr. BAKER. We believe that it is and we believe that we have a handle on how this is working.

#### AERONAUTICAL CHARTING TRANSFER TO THE FAA

Senator HOLLINGS. With respect to the aeronautical charting, there was an initiative to transfer that to the Federal Aviation Administration for a savings, I think, of \$14.5 million. But then, of all things, you come right back around and cancel it out by saying that you are going to pay for all the charts you produced for the Department of Defense. That is the one fat crowd we have in this town, the Department of Defense. You and I can squeeze money but when I get together with Senator Stevens and his Defense Subcommittee on the Defense appropriations, you ought to hear them talking billions, and everybody is rubbing each other's backs and everything else. So I just do not get it. Why would you do that? The Department of Defense can pay for its own maps.

Dr. BAKER. Well, Senator, this was not our decision. It was the decision by the Department of Defense that they did not want to continue to pay for this activity. I think in the short term we have an—

Senator HOLLINGS. Well, do not give them any maps. Just do not give them any maps.

Senator MIKULSKI. Sell it to them.

Senator HOLLINGS. Yes; you have to. When it comes down to it, you have to pay for it. I think we ought to look into that carefully. The Department of Defense cannot start that practice or all the other departments will come to you asking for the same.

## TURTLE EXCLUDER DEVICES

With respect to the TEDS, these turtle excluder using the soft TEDS. Now, I supported a study because my local shrimp trawler fleet and NOAA found that South Carolina turtle strandings have accounted for less than 15 percent of the total strandings from Florida to North Carolina in the past 10 years, which is the lowest percentage of any Atlantic State. Yet, North Carolina shrimpers can use soft TEDS and in South Carolina, I am penalized and I cannot. Why?

Dr. BAKER. Let me ask the TEDS expert, Nancy Foster.

Dr. FOSTER. I know this has been a growing concern on the part of South Carolina and we have asked our scientists in the Southeast to give us all of the rationale for the decision to put South Carolina in and leave Florida and North Carolina out. In fact, we are having a meeting sometime in the next few days where we are bringing our scientists together with some of your South Carolina fishermen and some of your staff to sit down and go over all the information, so, everybody understands where we are.

Senator HOLLINGS. Well, I do not know how you got us under the soft TEDS and kept them out of there. All that getting together and finding out the accurate information should have been done ahead of time rather than simply penalize us for the best record of any of those coastal States, according to your letter.

Dr. FOSTER. I understand.

## NMFS CHARLESTON LABORATORY STAFFING

Senator HOLLINGS. All right, with respect to the National Marine Fisheries Service Research Laboratories, what is your current spending in those areas? In other words, I went over to the regular institution and I was surprised to find that over at Fort Johnson we cut back some 30 personnel. We have cut back on the Federal jobs. Now I am wondering if we are putting out on contract or what is the personnel plan?

Dr. BAKER. Nancy, can you answer that? We can also get an answer for the record.

[The information follows:]

## CHARLESTON LABORATORY STAFFING

Under the Federal Workforce Restructuring Act of 1994 (Public Law 103-226), Full Time Equivalent (FTE) Streamlining Plans were developed by each operating unit in order to meet the reduction target established through fiscal year 1999. For the National Marine Fisheries Service (NMFS), the plan called for a total reduction of 309 FTE by the end of fiscal year 1999. This reduction is from the fiscal year 1993 baseline of 2,818 FTE and would provide for 2,509 FTE at NMFS at the end of fiscal year 1999.

In meeting the FTE reduction target through fiscal year 1997, NMFS will have reduced 274 FTE's of which 16 FTE's are from the Charleston, South Carolina laboratory at Fort Johnson. The reductions within NMFS and Charleston have been accomplished without running a disruptive reduction-in-force accomplished by utilizing earlier buyout programs and reducing the use of temporary and term-appointed personnel. Barring any specific budget cuts, there are no planned FTE reductions at the Charleston facility for fiscal years 1998 and 1999.

Dr. FOSTER. It is true that there has been a decrease on permanent employees and temporary employees at Charleston. It is true for all of our facilities. It is part of the downsizing part of the streamlining plan. And we have asked our people, whenever pos-

sible, to contract out instead of hiring people. And we are now looking at how much, if that is more expensive and how much more expensive it is to contract out instead of hiring.

Senator HOLLINGS. Generally, from our experience at the Government level, it is going to cost you more money. I mean that is how they shield everything again back over to defense. They just want consultants. Everything is done which you could have done in the Department with the expertise there, and now we are starting down that road here in NOAA. I would look at it very carefully, if you do not mind. I would appreciate it.

I apologize again for being late, Mr. Chairman, I have some other questions I will submit for Dr. Baker. Thank you.

#### PORTLAND, ME, DATA BUOYS

Senator GREGG. Thank you, Senator Hollings. It is always nice to have Senator Hollings ask questions because it then eliminates most of mine.

On the weather buoy issue, if you could tell us a little bit about how many of them, what percentage of them, are under the National Weather Service control and what is the status of the weather buoy situations, specifically the status of the weather buoy off of Portland Harbor? If you know? Generally, what is happening with the data buoys?

Dr. BAKER. Joe, can you answer that? Joe Friday is the Director of the Weather Service.

Dr. FRIDAY. Yes, sir; there are about 30 of the buoys in coastal stations that have been funded by other agencies or sources of funds that were temporary in nature. And those agencies, many of the other agencies have discontinued their programs. I do not know the specific status of yours but I will get back to you on the record, sir.

Senator GREGG. It is not mine, it is Maine's.

Dr. FRIDAY. We will get back to the record on that one.

[The information follows:]

NOAA operates a network of 89 buoys, of which 17 are paid for by other agencies or through special project funds on a reimbursable basis. NOAA's current appropriations only supports our base network of 72 buoys. In addition, there are 28 buoys that were previously operated and maintained via special funds or other Federal agency support, but are unfunded in fiscal year 1997. The Portland buoy is one of these unfunded stations.

The U.S. Coast Guard established and operated this station from 1984-94. In 1994, USCG retired their buoy. Using other funding sources, NOAA installed a replacement buoy in 1994. Unfortunately, NOAA's alternative funding source (NOAA's Geostationary Operational Environmental Satellite Contingency Fund) was exhausted on September 30, 1996, at which time all maintenance and repairs on these 28 buoys, including the Portland buoy, ended.

Recently, the wind instruments on station 44007 have failed. The buoy is still reporting wave heights, air pressure, and air and water temperature. The NWS will operate the buoy through the summer unless there is a significant failure wherein the buoy ceases to provide useful data and/or the hull itself becomes a threat to navigation. The situation will be reevaluated in the fall, and it is likely that the buoy will be removed since the position fixing equipment has also failed. Once removed, stations cannot be replaced without additional funding.

NOAA has asked the National Research Council (NRC) to conduct a short-term study on the buoy system to determine the required number of stations and associated location to ensure that essential data is available for coastal and marine warnings. The NRC plans to complete its study by the end of 1997. Based on this

study, NOAA will review our entire base funded network of buoys to ensure data points in critical areas. The Portland buoy will be included in this assessment.

Dr. FRIDAY. But this is a situation that we are faced with. We have approximately, again as I say, about 30 of these facilities around the coast of the United States that were funded by other agencies for other programs. We were taking advantage of the data and using those data. But as their programs terminated then the funding sources have literally dried up for that. We are continuing approximately 65 buoys that are funded by NOAA and we will continue that operation.

Senator GREGG. Well, what is going to happen to the 30 that were funded by other people? Are they just going to be allowed to sort of whither out there or be picked up and brought in or are they going to be left there and the information used?

Dr. FRIDAY. Our process as far as the maintenance of those buoys are concerned is that there is no funding for refurbishment and replacement of those buoys. So, what happens is as soon as those buoys fail the next time the Coast Guard buoy tenders are in that area they will pull them out so that they do not become a hazard to navigation.

Senator GREGG. Are these buoys valuable, these 30 buoys, to your weather prediction capabilities or are they marginal?

Dr. FRIDAY. The data buoys, themselves, are a very valuable source of information in the immediate ocean areas. We are looking at the capabilities now of new remote sensing capabilities such as the NASA scatterometer flying on the satellite and we are beginning to see good results from that and some of the near shore areas as well. So, there are other alternatives for ocean data. But the buoys are the only things that we have at present time that give us in situ data in the oceans.

Dr. BAKER. We have just agreed to fund a study by the National Academy to give us some advice on how we could prioritize the value of the buoys for our weather forecasting. We are just going to start that process.

Senator GREGG. Is this all the buoys or just your buoys?

Dr. BAKER. That is the full set. So, we will be able to answer that question about the priorities.

Senator GREGG. It would be helpful if we could get a map of where the buoys are, the 30 buoys that are at risk, and also some idea of what the transition time is between when these other technologies become available relative to when the buoys are going to go out of service.

#### NOAA-DOD POLAR ORBITING SATELLITE CONVERGENCE

What is the current status of the polar convergence?

Dr. BAKER. I think we are in very good shape on the Polar Convergence Program at the moment. We have very good agreement between the Department of Defense and NOAA about how the satellite program will move ahead and on the timing and the instruments. We expect to have the first satellite fly in about the year 2007. As you know, we have to start these programs very early to make sure that they do fly. This is a program that would be shared in cost equally between DOD and the Department of Commerce.

And this year the budget that is requested is, in fact, equally shared between the two.

We do not yet have agreement from the Office of Management and Budget about the out-years in the Department of Commerce budget and this is something that we are working with OMB at the moment. As I say, we do have agreement between the Department of Commerce and DOD about the program that is the converged program that saves about \$1.7 billion over what would have flown if we had not done the converged program.

Senator GREGG. So, do you have a carryover that you are working with here?

Dr. BAKER. There is always some carryover in satellites as they last longer. I do not think there is a carryover in the convergence program but there is in the polar program which is the existing program. Once again, this is a question of NASA setting requirements, telling us what they need. We fund NASA to do that. If NASA changes its views or does not need the funding then there is some money available which is then used for satellites.

Senator HOLLINGS. Well, I was at the State Department and I heard they held up on the finalization of the full satellite conversion.

Dr. BAKER. We had a disagreement with the Department of State on a question of the memorandum of understanding that we wanted to sign between NOAA and the European Meteorological Satellite Organization on data. Greg Withee, the Deputy Assistant Administrator for Satellite and Information Services, can tell us where we are on that memorandum of understanding with the Europeans.

Mr. WITHEE. The discussion was on the nontechnical and restricted data portions which is going on with DOD and the State Department right now. And, hopefully, they will come to conclusion in the next few weeks.

#### SATELLITE FUNDING REQUIREMENTS

Senator GREGG. How about this GAO report, what is your reaction to that relative to the GOES program?

Dr. BAKER. The GAO report indicated that there was carryover funding that could be made available, and I think, if I am referring to the right one, they suggested that NASA was asking for more carryover than was really needed. We have gone back and looked at that question. NASA has typically asked us for 3 months of forward funding so that they can, in fact, have the money to provide the contractors.

The GAO has suggested to NASA that they could live with less. We have been in discussions with NASA since that report has come out, and we have reached an agreement that we could probably live with 2 months forward funding, not 3. And this does, in fact, free up some money in the system because it changes the NASA requirements and we have made those numbers available to the committee.

Senator GREGG. I think the report also talked about the managerial issues of the program. Can you comment on that?

Dr. BAKER. Let me ask the satellite expert here, Greg?

## GOES FOLLOW-ON PROGRAM

Mr. WITHEE. Yes, sir, they reference the major GOES follow-on program and whether we were ready to start it or not. The situation is that we are not asking for new money for GOES follow-on beyond our present GOES program which we call GOES-Q. The reason is that we are still trying to formulate follow-on requirements working with the Weather Service and other users. We are also working with technology with NASA and DOD and other satellite research agencies who are developing technology and waiting for a little bit of a signal as to whether we should design our programs in 2010. We certainly will come back with a follow-on program in the next few years, but right now, it is too early.

## NATIONAL OCEAN SURVEY

Senator HOLLINGS. Mr. Chairman, regarding the national ocean survey backlog. Last year I think NOAA produced 235 new editions of the nautical charts and acquired and processed data from some 50 hydrographic surveys, but we still have some 43,000 miles. How long is this going to take? Are we using up the date charts or do we have a backlog due to a lack of money or expertise? How do you explain it? What is your comment?

Dr. BAKER. Meeting the critical area needs is really a question of money. Having money to pay for the surveys that we do. We received an increase last year, and we were able to increase the amount of mapping and charting that we did but we are still very, very far behind in mapping all the critical areas in the United States. Very far behind.

Senator HOLLINGS. Well, there you go. The money you get from NASA or whatever this is should be put to these charts or put to the maintenance of your equipment—your ships. Thank you, Mr. Chairman.

## NOAA FLEET

Senator GREGG. On that ship issue, you alluded to the fact that you think the fleet is critical to the NOAA purpose. Could you restate that for the record, why you feel that way.

Dr. BAKER. Well, Mr. Chairman, NOAA is the National Oceanic and Atmospheric Administration with the capability of going to sea, just like the capability of measuring and operating in the atmosphere is critical for the functioning of our agency from doing the trawling and measurements of stock assessment for fisheries. As you know, stock assessment for fisheries is critically important to measuring toxic substances and status and trends of pollution in the ocean to looking at the role of the ocean in climate. NOAA's ability to go to sea and make measurements in the ocean is the reason that we have El Niño forecasts today.

These are all critical elements. Senator Hollings just mentioned mapping and charting. NOAA is the U.S. agency responsible for the maps and charts of the ocean bottom out in the exclusive economic zone. The Navy is responsible for other countries but we are responsible for the United States. And, so, we must have the capability to go to sea. If we do not, these critical national functions will

simply be lost. We are in danger of doing that if we do not replace the NOAA fleet.

#### RIGHT WHALE RULINGS

Senator GREGG. Tell me a little bit about the right whale rulings and the effect it is going to have on the small lobster fishermen who have been in close. The fact that this new ruling will change the number of pots on a line and change the type of line creates a huge equipment expense. We all want to make sure that we protect this species, but there is some belief that the proposed regulations not only will not help protect the species all that much but are going to incur a lot of costs which probably would not be necessary. So, can we get your thoughts on that?

Dr. BAKER. A couple of things, Mr. Chairman. One is we have a very, very endangered population of right whales. Right whales used to be so plentiful that they were one of the major commercial species that was whaled in the United States. Now, we have about 300 of these right whales and it is not clear that even at that level that this population will survive.

We have done a couple of things with these proposed regulations. One is to expand the State area slightly just north in Massachusetts and then we have also put out a proposed ruling asking for public comment about restrictions that would take place further north in the Gulf of Maine.

We are now looking at the comments that are coming in, and we will respond to those. But it is a difficult situation on both sides, I think. We have this very, very endangered population—really it is difficult to lose even one of the whales. At the same time we recognize the needs of the small fishermen and the lobstermen. And, so, that is why we have a proposed rule. We are looking for comment, and we will, hopefully, go back and we can try to accommodate everybody's needs here.

Senator GREGG. Well, if my office is any example, we only have 18 miles of coastline but we are sure getting a lot of comment. [Laughter.]

So, hopefully, we can work together. We want to protect the whale, obviously. We also want to do it in a way that does not end up putting an industry, which is already under significant stress because of overfishing and because of the big factory ships coming in and taking out the stock, under even greater stress. So, I hope we can work out something there, and we look forward to trying to find a solution.

#### CLEAN WATER INITIATIVE

How about this clean water initiative which is now running money through the Coastal Zone Management Act? Is that an effective way to address these issues or is it basically taking away flexibility from the coastal zone management people?

Dr. BAKER. Well, we were big supporters of this program because it was not something that was laid on us as an additional or different activity from NOAA programs. This was an opportunity for us to provide some more resources within the context of programs that have been very successful. Our coastal zone management program, I think, has been one of the most successful State/Federal

partnerships that has ever been developed. You can see that Texas and Georgia just joined.

And, as you know, this is where States decide what they want to do and NOAA is involved in looking at Federal consistency providing financial support and expertise to help States develop their coast but in a way that is consistent with environmental protection and providing the kind of coastline that people want to live on.

I think it is a wonderful example of sustainable development because our population along the coasts is growing and people who live on the coast want to have clean water and a nice environment but they also want to live there. So, you want development, and you want a way that it can be done sustainably.

The coastal zone management program has done very well and this provides additional funding for us to do that. So, the largest part of the funding simply enhances our ability to do more in our coastal zone management program. When I say, our, I mean the State/Federal partnership. Then we also have about \$2.9 million that we are adding for additional monitoring of toxic pollution, sediments, and organisms in coastal areas so we can address these problems of harmful algae blooms and change of pollution.

Then we are also providing funding for a cleanup of toxic waste within existing programs. So, it was an opportunity for us to take successful, State/Federal partnerships and enhance them and do what the States want to do.

Senator GREGG. The coastal zone management is a great program—very strongly supported in New England. But, the frustration is that it is creating a stream of funding, targeting it, and not giving it any flexibility as to its utilization. And, as a result, redirecting the energies of the coastal zone management initiative when it might be more appropriate that these funds flow through some other activity and get the same result—better than drawing off of the energies of the coastal zone management. Have you heard that frustration?

Dr. BAKER. I have heard a little of that. As we look at the opportunity for new funds, we wanted to make sure that programs were done in a way that was consistent with programs we know are successful. And the thing about the coastal zone management program is that States decide what they think is important and then we do it through an existing mechanism. So, it is an efficient way to address State needs. It is not the Federal Government saying this is what ought to be done. We ask the States what they want to do and then we use this mechanism to get the funding out. NOAA will monitor this to make sure that we do not have this problem of what might be a separate stream of funding. We will closely watch that.

Senator GREGG. Do you have any more questions, Senator Hollings?

Senator HOLLINGS. No; thank you, Mr. Chairman.

Senator GREGG. Did you have anything else you would wish to add?

Dr. BAKER. Just to say that we appreciate this committee's support of NOAA programs and the opportunity to say something about the NOAA fleet. I am very concerned about this, it is a

central passion of mine, and I look forward to working with you to see if we can solve the problem.

#### ADDITIONAL COMMITTEE QUESTIONS

Senator GREGG. Well, this committee is a strong supporter of your efforts. Doctor, I think NOAA is one of the premier agencies we have in the science community and in the world, and I think you will find strong support throughout this committee for it. Thank you.

Senator HOLLINGS. Thank you.

Dr. BAKER. Thank you, Mr. Chairman.

[The following questions were not asked at the hearing, but were submitted to the Department for response subsequent to the hearing:]

#### QUESTIONS SUBMITTED BY SENATOR KAY BAILEY HUTCHISON

##### ENDANGERED SPECIES ACT [ESA]

*Question.* Since 1990, you have been allocated \$93.5 million to carry out your authority under the ESA to protect species. According to your data, your efforts have focused on 13 species over that period of time. On average, this amounts to \$13.4 million per species. I have several concerns about these figures.

Why, in spite of the tremendous amount of money spent on species protection, has a single species not been "recovered" and been delisted?

*Answer.* In fact, the Gray whale (*Eschrichtius robustus*) was declared recovered and was delisted in 1995. With respect to other ESA-listed species, the National Marine Fisheries Service (NMFS) has made substantial progress in reversing the declines of some species though they are not yet "recovered." The species under NMFS' jurisdiction, with the exception of salmon, are generally long-lived, highly migratory species that have a late age of reproductive maturity. It is unlikely that recovery can be achieved within several years when the species generation time may be 10–30 years. However, NMFS monitors each species to evaluate its recovery actions and to determine whether its actions are having a beneficial effect. For example, the Kemp's ridley sea turtle (*Lepidochelys kempii*) has benefitted from several years of increased hatchling production at its nesting beach in Mexico and protection at sea from shrimp trawl mortality through the use of turtle excluder devices. This population now appears to be in the early stages of exponential expansion and experts project that it could reach an intermediate recovery goal of 10,000 nesters by the Year 2020. NMFS will continue to evaluate the status of this and other species annually.

*Question.* How can an increase in funding for these functions be justified when the millions spent on this effort so far have not yielded the result sought or the recovery of the species listed?

*Answer.* In addition, funding is requested to prevent the extinction of highly endangered Pacific leatherback sea turtles from the effects of sustained losses of eggs on Mexican and Costa Rican nesting beaches, and incidental capture and mortality in high seas commercial fisheries. As stated, NMFS has made substantial progress in reversing the declines of some species, though they are not yet "recovered."

*Question.* What do you intend to do to ensure that the millions of dollars allocated to species recovery actually yield the result intended by the Act?

*Answer.* NMFS is committed to strategic planning and performance-based budgeting for its recovery activities. This process establishes long and short-term priorities and milestones by which to measure progress quarterly. Base-funded activities within NMFS are subject to these planning and review procedures and periodic detailed program reviews are held to further evaluate performance. NMFS has also established a national, collaborative process that considers immediate and long-term species needs and agency priorities in allocating new resources appropriated by Congress. This process involves all of our regional offices to help ensure that we are taking the most effective action to recover species. Actions supported by this process are evaluated as described earlier.

## SPECIES RECOVERY

*Question.* With specific reference to species recovery, this year you seek an increase of \$6.7 million over your fiscal year 1997 allocation for this function alone, increasing that aspect of your budget from \$13.5 million in fiscal year 1997 to \$20.2 million in fiscal year 1998.

Why, in spite of the fact that drafting a recovery plan is the first step toward actually recovering species, have you never written final recovery plans for six of the listed species?

*Answer.* Many recovery plans have been completed. Plan completion depends on when a species is listed, plan complexity, whether the species already has a conservation plan, and the benefits that the species would derive from plan development. Since a recovery team must be assembled to prepare the plan and draft plans receive at least two stages of review, recently listed species (e.g. Umpqua cutthroat trout and the Central California coho Evolutionary Significant Unit), would not yet have final plans. Other plans, such as the complex Sacramento winter-run chinook recovery plan, are currently in the draft stage. The highest priority for plan development is assigned to plans for species that will derive the greatest benefit from recovery plan development. Listed species with conservation plans already developed, such as whales, are a lower priority. Listed species unlikely to benefit from recovery plan development, such as foreign species over which the United States has no management control, are the lowest priority.

*Question.* For what specific aspects of species recovery do you seek additional funds?

*Answer.* As stated earlier, additional funds are being sought primarily for Pacific salmonid recovery actions to be conducted in cooperation with states, tribes, and other Federal agencies. New funding will support conservation planning for state conservation programs. In addition, support will be used to undertake actions required to address increased responsibilities and workload associated with harvest, hatcheries, habitat and hydropower activities in response to additional salmon and steelhead listings along the west coast. Additionally, NMFS proposes to complete more habitat conservation plans in response to landowner interest in cooperatively addressing salmon conservation, improving state-Federal cooperation through technical and policy support to states, and assisting Federal interagency efforts to take an ecosystem approach to multispecies management. Finally, NMFS proposes to establish cooperative conservation program agreements under Section 6 of the ESA with additional states, including Alaska, California and Washington. Actions to recover highly endangered Pacific leatherback turtles will also involve cooperative conservation measures with Central American nations and cooperation with U.S. and international fisheries that interact with these turtles to document the impacts of incidental take and to develop appropriate mitigation measures.

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 QUESTIONS SUBMITTED BY SENATOR ERNEST F. HOLLINGS

## NOAA CORPS DISESTABLISHMENT

*Question.* The National Oceanic and Atmospheric Administration (NOAA) Corps can trace its roots back to 1807—then President Thomas Jefferson signed a bill for the “Survey of the Coast.” For about two centuries, members of the NOAA Corps and their predecessor, the Coast and Geodetic Survey, have ably served our Nation. Last year, you announced that the Corps would be “civilianized” as a cost-cutting measure eliminating it as a uniformed service. However, a study by Arthur Andersen and Company suggests that annual costs to the government associated with NOAA Corps officers are about \$29.7 million annually. By contrast, the study estimates that the annual costs to the government for an equivalent civilian workforce would be \$30.3 million. In addition, civilian moving costs are about three times higher than those for NOAA Corps officers.

Dr. Baker, I’m having a hard time understanding how eliminating the NOAA Corps qualifies as a cost-cutting measure. Please explain.

*Answer.* The dedicated men and women of the NOAA Corps have a proud history of service to the Nation. The recommendation of the National Performance Review to disestablish the Corps should in no way be viewed as a reflection on the past contributions and fine work of the officers of the Corps. However, it is difficult to justify a separate uniformed service with a distinct personnel system to support less than 300 active duty officers, particularly in view of a recent report of the General Accounting Office that concluded the duties currently performed by NOAA Corps officers can be performed by civilian employees.

You expressed concern about the longer term savings of the proposal to disestablish the Corps. NOAA has commissioned a study by an independent actuary familiar with the NOAA Corps compensation system and the Federal Employees Retirement System (FERS) to take a hard look at the comparative costs of continuing the NOAA Corps as a uniformed service and the cost of a FERS system for officers not eligible to rehire. That study, contained in the Administration's Disestablishment Plan transmitted to Congress on May 21, 1997, indicates that disestablishment would result in retirement systems savings of \$2 million per year by reducing the system's unfunded liability. These costs were not considered by the Arthur Andersen study. Additional savings—involving salaries and benefits, as well as increased tax receipts—that would result from disestablishment are identified in the Disestablishment Plan.

*Question.* Last year's appropriations conference report called for submission of a long-term plan for the Corps along with the legislative changes needed for implementation. I understand that a plan to disestablish the Corps has been under review at the Office of Management and Budget for some time but that there is concern over its cost. At the same time, the fiscal year 1998 NOAA budget request includes \$6 million to cover the costs of disestablishing the Corps. What is the hold up on the plan and when can we expect to see it?

*Answer.* The Office of Management and Budget has completed its review of the draft plan and accompanying legislation to disestablish the NOAA Corps. The package was transmitted to Congress on May 21. Under the Administration's plan, officers who are eligible for retirement would be retired and would be invited to compete for positions essential for the accomplishment of the NOAA mission. With respect to those officers who have insufficient service to retire, the plan contains financial inducements for officers to convert into civilian employees of NOAA. There is a one-time cost associated with this payment.

The principal cause of the delay in getting the plan and legislation has been the complexity associated with this transition, in particular, from one retirement system to another. We commissioned a study by an independent actuary familiar with the compensation and retirement system of the NOAA Corps and the civil service FERS to help us understand the costs and implications of this change. The report appears in an appendix to the plan.

*Question.* The Reserve Officers Association suggests that the actual cost civilianizing the Corps far exceeds the \$6 million requested in the budget and a better number would be at least \$14 million plus retired pay. Is this assessment accurate? Please explain.

*Answer.* The one-time costs associated with disestablishment (including, for example payments in lieu of separation pay to officers who convert to NOAA civilian positions—approximately \$9.1 million) are estimated to total \$13.3 million and are detailed in the disestablishment plan. These expenses fall within the \$14 million requested in the fiscal year 1998 budget. Upon disestablishment, the Corps' retirement program (expected to consist of approximately 415 individuals) would be transferred to the Department of the Navy. If this transfer occurred on October 1 (as proposed by the Department's legislation), the full \$14 million would be available to NOAA to cover the one-time disestablishment costs. If the disestablishment occurred after October 1, NOAA would be required to use a portion of the \$14 million to pay retirement benefits to retired NOAA officers. The share of the \$14 million to be used for such payments would depend on the timing of the disestablishment.

*Question.* If the Corps is to be eliminated, what assurances can you provide that the current members will be extended the full range of compensation programs afforded military personnel during a defense draw down?

*Answer.* Disestablishment of the NOAA Corps recognizes the need to continue (through the use of civilian employees) duties performed by Corps officers. For example, Corps officers ineligible for retirement would be offered the opportunity to convert to a civilian position within NOAA and receive a conversion payment, in lieu of separation pay. Disestablishment, therefore, is not analogous to a defense draw down and the compensation and other provisions affecting NOAA Corps officers, while equitable, are not necessarily identical to those provided in connection with a defense draw down.

*Question.* Is the \$6 million request adequate to provide such compensation? If not, why not?

*Answer.* Yes, \$6 million is adequate to fund the additional compensation costs.

#### FLEET MODERNIZATION

*Question.* Dr. Baker, we've been talking now about modernizing the NOAA fleet for about a decade. Over that period, NOAA, the General Accounting Office, the In-

spector General, the National Research Council and Vice President Gore's reinventing government team have completed half a dozen plans and studies. Meanwhile, the fleet is aging and the condition of the ships is deteriorating. In 1989, 23 ships were operational in the NOAA fleet. Today, the fleet consists of 15 active ships and several tied to the dock. Now, your budget request for fiscal year 1998 proposes to spend \$3.8 million to design a new class of acoustically quiet fisheries research vessels. But, while your budget proposes to spend over \$2 billion in the next five years on weather satellites and equipment, it provides no money to actually procure any vessels. I'm concerned that we will continue to put off funding decisions and study the NOAA fleet until it completely rusts away.

*Question.* What can we do to bring this planning process to a close, and get on with implementing a modernization plan?

*Answer.* Over the past several years, NOAA's fleet modernization planning has evolved from a large in-house fleet to the current planning which includes a mix of NOAA vessels, charters, university vessels, and contracts for data. NOAA has revised its plan to reflect this approach and the plan is currently under review at the Department of Commerce. Future budgets will consider the cost of financing the new vessels.

*Question.* Why is the Administration willing to commit to long-term investments in satellites and weather equipment but not ships?

*Answer.* The Administration, cognizant of the desire of Congress to reduce the deficit, has chosen to commit to long-term investment programs on a priority basis. Even though ships are critically important to NOAA's stewardship mission, the satellite and weather equipment programs, because of their involvement in the safety of human life, received first priority status for long-term funding. The weather service modernization has been NOAA's highest priority, assuring that NOAA has access to a sea going capability is essential. Any future vessel acquisitions are currently under consideration as a part of the Administration's fiscal year 1999 budget formulation.

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#### QUESTIONS SUBMITTED BY SENATOR DANIEL K. INOUE

##### AQUACULTURE

*Question.* How much is included in the President's fiscal year 1998 budget for aquaculture research, development and implementation? How does the National Oceanic and Atmospheric Administration (NOAA) plan to disburse these funds? Which NOAA department(s) will administer these funds?

*Answer.* Aquaculture is an emerging area of great importance to NOAA. NOAA currently administers funding for aquaculture research, development and implementation primarily through two of its line offices: the National Marine Fisheries Service (NMFS) and the Office of Oceanic and Atmospheric Research (OAR). Within the fiscal year 1998 budget request for NMFS, there is no dedicated funding for aquaculture research, development and implementation. However, through our Saltonstall-Kennedy grants and the fisheries finance programs, it's likely that aquaculture projects would be funded in fiscal year 1998. Our Milford, CT and Manchester, WA labs, as well as others, have vast aquaculture experience. In the past, NMFS has provided funding to the Oceanic Institute and a private company in the Gulf of Mexico for mariculture projects, although none is planned for fiscal year 1998. NMFS provides approximately \$10.3 million to support Mitchell Act hatchery operations in the Pacific Northwest. In addition, NMFS is in the process of hiring a full-time aquaculture coordinator to facilitate the program and promote development in this area.

The President's fiscal year 1998 budget request for OAR does not explicitly include funds for aquaculture research, development, and implementation. Funds are provided through the National Sea Grant College Program competitive research and outreach processes at the Sea Grant College level. Funds are not set aside specifically for aquaculture. Aquaculture competes for funds among other high priority topics supported by the Sea Grant Colleges. In fiscal year 1996, Sea Grant supported, with Federal and matching funds, \$9.7 million of aquaculture research and outreach programs. We would expect this level of activity to continue in fiscal year 1997 and beyond.

##### NATIONAL UNDERSEA RESEARCH PROGRAM [NURP]

*Question.* I understand that during a budget briefing for the Senate Appropriations staff in February, representatives from the Department of Commerce indicated

that the President's fiscal year 1998 request for NURP contemplates termination of the regional centers. Is there any truth to this statement?

Answer. We do not contemplate terminating the regional undersea research centers. NURP is currently being redesigned to meet both Congressional and Administration concerns. The new program will continue to be a national program managed by a network of regional undersea research centers. While the research centers will have more autonomy in running their research programs, they will be held accountable for their performance through a series of review processes integral to the new program. The research centers will be closely linked to NOAA's strategic planning process so that their programs can be more closely tailored to focus on research relevant to NOAA and national needs. Important to the new program is the addition of a national level advisory council composed of NOAA and other agency program leaders, as well as academic representatives, with a stake in undersea research. We will be looking to this body for advice in determining future directions for the program.

#### REORGANIZATION OF NATIONAL MARINE FISHERIES SERVICE REGIONS

*Question.* What is the status of plans to reorganize the northwest and southwest regions of the National Marine Fisheries Service? Is consolidation of the two regions still an option under consideration?

Answer. At this time, NOAA/NMFS are not pursuing the consolidation of the Northwest and Southwest regions.

#### PACIFIC AREA OFFICE

*Question.* Because of the ongoing discussions about reorganization in the southwest region and recent personnel changes in the region, as well as the unique issues facing the Western Pacific community, I am very interested in exploring the idea of establishing a Pacific Area Office (PAO) headquartered in Hawaii, which will focus on the needs of the western Pacific. The acting southwest regional director and others in the NMFS leadership have expressed their support for this idea. I would appreciate your reviewing this matter and assistance in working toward the goal of establishing a PAO.

Answer. The establishment of a PAO in Hawaii, as an option for the best organizational structure, is under review by NOAA. We are currently scoping the costs and other factors associated with establishing a PAO. Discussions are ongoing and we will be working with you and your staff as the concept is being developed.

#### PACIFIC INSULAR AREA FISHERIES AGREEMENT

*Question.* What is the status of NOAA's efforts to implement the terms of the Pacific Insular Area Fisheries Agreement authorized by the Sustainable Fisheries Act of 1996?

Answer. NMFS, the Western Pacific Fishery Management Council, and the Department of State participated in two working group meetings with key representatives of fishery and economic development agencies from Guam, Northern Mariana Islands and American Samoa to work toward the development and implementation of the Pacific Insular Area Fishery Agreements (PIAFA).

The first workshop on the development and implementation of the PIAFA was held in Honolulu, Hawaii, in February and discussed (1) a schedule for the process of implementing a PIAFA, (2) the development of a marine conservation plan, (3) the content of a PIAFA, (4) the PIAFA negotiation process, (5) the foreign fishing vessel permit process, (6) determination of total allowable level of foreign fishing (TALFF), (7) determination of fishing fees, and (8) reversion of fishing violation payments to the appropriate insular area.

The second workshop on the development and implementation of the PIAFA was also held in Honolulu, Hawaii, in April, and discussed (1) various options for an observer program, (2) consistency with Fishery Management Plans, (3) model foreign fishing agreements, (4) uses of the Sustainable Fisheries Fund, (5) the development of foreign fishing regulations, and (6) further determination of TALFF.

The insular areas continue to work toward the initial preparation of their marine conservation plans and foreign fishing regulations as well as establishing options for an observer program. At the second workshop, the delegate from American Samoa suggested that locally focused working groups to work through the foreign fishing regulations in detail would be more efficient in determining what was appropriate for each particular insular area. This was supported by the representatives from Guam and the Northern Mariana Islands who said that these groups should focus on providing assistance in the development of marine conservation plans as well as other appropriate issues.

UNITED STATES-JAPAN COMMON AGENDA GLOBAL OBSERVATION INFORMATION  
NETWORK [GOIN] INITIATIVE

*Question.* What role, if any, does NOAA have in the State Department's efforts to implement the Common Agenda for Cooperation in Global Perspective, commonly referred to as the Common Agenda, negotiated between the United States and Japan in 1993?

*Answer.* Through the GOIN initiative, the United States and Japan have gained broad support to make earth observations and environmental data and information held by their agencies and institutions more accessible and useable by scientists and researchers via electronic links across the Pacific. Since the GOIN initiative was launched in 1993, NOAA and Japan's Science and Technology Agency have coordinated activities of other U.S. and Japanese agencies and institutions in collaborating on pilot projects during the first and second two-year phases outlined in the GOIN Implementation Plan. These efforts have increased network connectivity and computer interoperability between U.S. and Japanese participants. Through private circuits and the Internet, the participants are developing a "virtual GOINnet" to support cooperative agency and institution programs and collaboration among scientists in both countries.

Building on the successful First GOIN Joint Technical Symposium and Workshop in Tokyo, Japan during June 1996, participants are planning GOIN97—the Second GOIN Joint Technical Symposium and Workshop at the National Center for Atmospheric Research Mesa Laboratories in Boulder, Colorado, June 23–27, 1997. The symposium on major global change issues for participants at the G-7 Economic Summit in Denver will emphasize the consensus on data and information exchanges, highlight common technologies, and demonstrate ongoing and new GOIN pilot projects.

The following is NOAA's International Affairs office participation and involvement in Common Agenda activities:

- NOAA is advising the Department of State (DOS) on priorities for joint International Coral Reef Initiative policy development and implementation. This includes encouraging Japan to follow the U.S. lead in funding a portion of the GLOBAL cost of the global coral reef monitoring network. (Japan, like the U.S., has provided initial support for an Asian regional monitoring network.)
- NOAA is developing a Concept Paper for a Caribbean Marine Center which was originally proposed by the United States Agency for International Development at a January 1996 Common Agenda meeting. This center has not yet been agreed to as part of the joint work plan.
- Under the leadership of DOS, NOAA has provided logistical support for and participated on a DOS led research and planning team to Palau to develop a Palau Marine Research Center.

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QUESTIONS SUBMITTED BY SENATOR FRANK R. LAUTENBERG

ECOSYSTEM FISHERIES MANAGEMENT

*Question.* Section 406 of the Magnuson-Stevens Act requires the Secretary to establish an advisory panel to develop recommendations to expand the application of ecosystem principles to fishery conservation and management activities. Could you please provide the status of NOAA's efforts to fulfill this requirement? How, if at all, did NOAA consult with the National Academy of Sciences in developing this panel?

*Answer.* National Marine Fisheries Service (NMFS) finalized the list of 20 panelists on April 10, 1997 and is in the process of notifying the individuals of their appointment to the panel. A press release announcing the panelists is scheduled to be distributed on May 6. In developing the panel, NMFS solicited nominations from several sources including the National Academy of Sciences and several of the Academy's nominees were appointed to the panel.

*Question.* How is NOAA currently incorporating ecosystem principles into fishery conservation and management? What research is being conducted in this area? How is this research being applied to make fisheries management more effective?

*Answer.* NOAA incorporates ecosystem principles into fishery conservation and management through a number of mechanisms. For example, stock assessments are increasingly incorporating environmental variability, and habitat protection is recognized as a critical component in maintenance of healthy fish populations.

Almost all of NMFS research activities make contributions to our understanding of marine ecosystems. The task now is to determine the critical gaps in our knowl-

edge of ecosystem structure and function, and to fill those gaps through a strong research program.

*Question.* The fiscal year 1998 budget requests more than \$160 million for assessing fish stocks using traditional approaches. Only \$12.9 million is requested to advance fisheries predictions through new research under the Coastal Ocean Program that incorporates multispecies interactions and environmental variables into fisheries predictions. Why is NOAA proposing a \$1.1 million cut in the Coastal Ocean Program?

*Answer.* The Coastal Ocean Program is requesting \$15.2 million in fiscal year 1998 which is the same level as appropriated in fiscal year 1997. The \$1.1 million reduction in advance fisheries predictions in fiscal year 1998 is associated with the National Undersea Research Program not the Coastal Ocean Program. This decrease is addressed in the answer to a question asked by Senator Inouye during the fiscal year 1998 Senate Appropriations hearing.

#### HIGHLY MIGRATORY SPECIES

*Question.* As you know, Atlantic Highly Migratory Species (HMS), such as tunas, oceanic shark, swordfish, and other billfishes, are internationally shared resources whose effective conservation and management must involve the cooperation and compliance of many harvesting nations. Many fisheries from my state participate in the HMS fishery. The U.S. participates through the International Commission for the Conservation of Atlantic Tunas (ICCAT) and the United Nation's Food and Agricultural Organization. The U.S. has an international commitment to provide scientific support and to abide by these international agreements. The management of commercial and recreational fishing for these species is carried out by the NMFS HMS Division. Because of the economic value of highly migratory species, this is indeed one of the most contentious fisheries to manage. However, the budget request for this division does not appear sufficient to conduct the extensive data collection and scientific monitoring needed.

For example, recently the U.S. was invited to an international ICCAT meeting in Madrid to develop a fisheries observer program to scientifically monitor juvenile Bigeye Tuna and Yellowfin Tuna. The Southeast Fisheries Science Center was told that no funds were available to send a U.S. scientist to this important meeting.

How are the HMS Division budget needs determined, and how can important U.S. priorities such as this be dropped without the necessary follow-up to actually achieve conservation goals?

*Answer.* Data collection and scientific monitoring for highly migratory species (tunas, sharks, swordfish, and billfishes) are conducted by several NMFS Offices of which the HMS Division is only one component. The HMS relevant budget concerns are also independently managed by the Office of Protected Species (observer programs), and the Northeast and Southeast Regions and Science Centers (assessments, biology, vessel logbooks, and dealer reports). Fiscal year funds are allocated to each line office consistent with the goals established by NOAA's strategic planning process. A portion of HMS Division funds are further reallocated consistent with the priorities for management and research determined by discussions and meetings among all concerned offices within NMFS. Normally, the HMS division allocates direct funds among HMS division tasks, contracts with universities, states and the private sector, and by transfers to the regions and centers for specific HMS research projects. As with any program, limited funds must be applied on a priority basis to seek solutions for multiple objectives simultaneously.

The ICCAT meeting referenced in your question was one of many meetings for which priorities and expenditures had to be evaluated. The meeting ranked high in terms of priority for representing U.S. interests in developing the ICCAT observer program. Initially, it was planned that a center scientist would attend. However, agency budget constraints precluded authorization of travel for that meeting.

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#### QUESTIONS SUBMITTED BY SENATOR LAUCH FAIRCLOTH

##### SUMMER FLOUNDER

*Question.* Please explain how the National Marine Fisheries Service (NMFS) determines or defines when summer flounder is fully recovered or rebuilt.

*Answer.* In amendment two to the Fishery Management Plan for Summer Flounder (FMP), the Mid-Atlantic Fishery Management Council (MAFMC) did not specify a recovered or rebuilt stock level. Instead, the FMP addressed overfishing by setting a target fishing mortality rate that would maximize yield per recruit ( $F_{max}$ ) of 0.23. This goal is a yield-based target that will maximize the landings from the stock on

a per-recruit basis. A recruit is a fish that is available to the fishery for harvest due to growth to some legal size or through migration. The FMP goal is attainment of  $F_{\max}$  (a level at which overfishing is no longer occurring) in 1998 and beyond. Within several years after fishing has been maintained at this level, spawning stock abundance will have increased. The sustainable annual yield of summer flounder will eventually reach about 40 million pounds, slightly more than double the 1997 coastwide quota (commercial plus recreational fisheries) of 18.5 million pounds.

The Sustainable Fisheries Act (Public Law 104-297) revised the Magnuson-Stevens Act to require FMP's to end overfishing and to rebuild affected stocks. The MAFMC plans, in a future amendment, will define rebuilding for the summer flounder stock so that the stock will produce maximum sustainable yield.

*Question.* Please explain the "target fishing mortality rate." What is the current rate? When was this rate developed? How does it relate to rebuilding of summer flounder?

*Answer.* The target fishing mortality rate is the rate of fishing that the MAFMC has established that would maximize the yield per recruit.

The target fishing mortality rate of  $F_{\max}$  for summer flounder was developed using the Thomson-Bell Yield per Recruit Model. This model is used by NMFS, Northeast Fisheries Science Center (NEFSC) scientists, and other fishery scientists to calculate yield per recruit for many fish species. The target  $F_{\max}$  of 0.23 was derived from an analysis conducted in 1990 by the Stock Assessment Review Committee (SARC) for the 11th Northeast Regional Stock Assessment Workshop (SAW-11). This level is periodically reviewed, but because the input parameters that determine the value of  $F_{\max}$  have changed very little since the target was established, estimates calculated in subsequent assessments have varied little from the 0.23 value. As a result, the SARC has not revised the estimate. If the stock were fished at  $F_{\max}$ , then the annual rate of exploitation (exploitation rate), or the percentage of the stock removed each year by fishing, would be about 19 percent. SAW-22 estimated that the 1995 fishing mortality rate was 1.5; this corresponds to an exploitation rate of 72 percent. This is far above the target level of fishing mortality ( $F$ ) and its corresponding exploitation rate.

Reductions in  $F$  directly relate to fish survival and stock rebuilding. Reductions in  $F$  on fully recruited summer flounder will (1) contribute to spawning stock biomass (SSB) which enhances the chances of strong recruitment, (2) provide protection against the negative impacts to the fishing industry that would accompany recruitment failure, and (3) promote an expanded age distribution that will provide more valuable (larger) summer flounder to the fishery.

*Question.* NMFS reports that the spawning stock biomass has grown from 5,247 metric tons in 1989 to 15,235 metric tons in 1995. During that same period, the commercial quota has shrunk from 15.6 million pounds to 11.1 million pounds, and there is a proposal to reduce the quota further to 8.4 million pounds in the 1997 season. Please explain the apparent inconsistency in these trends.

*Answer.* The annual commercial quota has been reduced several times over the past few years, because the target fishing mortality rate that corresponds to an allowable percent removal from the stock (an exploitation rate) has been reduced consistent with FMP objectives. The abundance of summer flounder should increase substantially within several years after 1998 (the first year that the rate of removal reaches the long-term annual goal of 19 percent). When stock abundance increases substantially, the 19 percent removal rate will still result in larger commercial quotas than have occurred in the summer flounder fishery in the past few years. In 1989, the summer flounder stock was heavily exploited. SAW-22 estimated that fishing mortality was 1.75, an 77 percent exploitation rate. At that time, the landings were not constrained by a quota which was first implemented in 1993. The quota is set each year to achieve the target fishing mortality rate rather than being based on SSB. It is true that the stock is increasing but fishing mortality levels have not approached the goal of 0.23. The projected reduction in commercial quota to 8.4 million pounds was not adopted because MAFMC and NMFS determined that an increase in minimum fish size and a quota of 11,111,298 pounds could attain the FMP objectives.

*Question.* What are the problems associated with age and/or year class? How do these problems impact stock assessment and establishment of annual quotas? If there are problems, what can be done to resolve age/year class questions? Has NMFS reviewed the North Carolina landings data which show a landing percentage of 44 percent of flounder three pounds or greater?

*Answer.* SAW-22 noted that there were discrepancies between how NMFS and North Carolina staff determine what is or is not an age-1 summer flounder. If the assumptions that North Carolina staff use are accepted, then some of the age-1 fish used in the assessment would be considered age-2. These changes would affect both

Northeast Regional commercial fishery and NEFSC survey age-length keys. The potential magnitude of such changes is likely to be small but pending research on their effect on the assessment has not been completely evaluated.

NMFS and North Carolina officials have noted that the aging discrepancies are a problem, and the differences in aging are being investigated. Participants in recent NEFSC winter and spring trawl surveys have collected both otoliths (ear bones) and scales from summer flounder in the size range that is in question. NMFS is hopeful that examination of both aging structures (scales and otoliths) may help to resolve aging differences.

NMFS is aware that North Carolina biologists report a higher percentage of market medium and large summer flounder this year than in previous years. An examination of the 1996 fall mean-length-at-age data indicate that, at that time of year, those fish were age-1 and 2 (mostly age-2, market category medium), and age-2 and 3 (market category large). These fish are the result of relatively strong 1994 and 1995 year classes. If the age structure of the stock were more robust (i.e., there were more fish of older age classes represented in the population), there would be a higher percentage of large and jumbo fish landed in North Carolina and elsewhere. The landings information provided by North Carolina supports the conclusions of SAW-22 that biomass is increasing but that the majority of that biomass remains in the younger age classes. It is important to protect these larger fish so that the age distribution may expand and contribute to a more stable stock condition.

*Question.* Fishermen on the water believe that they are seeing a record number of fish but this does not appear to be adequately reflected in the stock assessments? How does NMFS determine whether or not there is an abundance of large fish farther offshore in North Carolina and other coastal states? What recommendations do you have about the increased stock assessment and survey work on summer flounder?

*Answer.* SAW-22 in 1996 estimated an increase in spawning stock biomass (abundance), and fishermen have also noted this increase. SAW-22 used NEFSC research vessel survey data, state survey data, and state commercial landings data in the assessment of summer flounder.

NEFSC surveys areas as deep as 150 fathoms. To obtain information about the stock beyond this depth, NEFSC depends on commercial fishery landings data. If concentrations of large fish beyond the range of the survey are exploited by the commercial fishery, they would be reported as landings in the commercial fishery in the large and jumbo market categories.

The SAW-22 document specified research recommendations for the summer flounder fishery. These included the following: (1) support of ongoing cooperative work between the NEFSC and the North Carolina Division of Marine Fisheries (NCDMF) to ensure consistent aging of summer flounder, (2) better domestic sea sampling coverage to include adequate age and length sampling, continued sampling once quotas are reached, and better sampling of discards, (3) research to determine discard mortality rates and length and age frequency in the commercial and recreational fisheries, and (4) research to better characterize the spawning potential of younger summer flounder. A copy of the SAW-22 research document, which includes these recommendations, is available upon request.

*Question.* NMFS has recently utilized North Carolina landings data to impose reductions on the North Carolina quota. Please explain the extent of the NMFS commercial flounder sampling program coastwide. How does the agency monitor harvest data coastwide? Does the agency receive and rely upon such data from the other coastal states to take similar action coastwide? If not, please explain how the quota system is managed and what safeguards are in the place to ensure that each state is treated equally.

*Answer.* NMFS has not been able to utilize data collected by the NCDMF. During the last year, we have attempted to come to an agreement on several issues involving the confidentiality of the NCDMF data. NCDMF and NMFS are currently working on a memorandum of understanding to develop coordinated and nonduplicative data collection systems in the State.

In North Carolina, as in other states, NMFS has the responsibility to collect landings data for all federally-managed species. These collections are conducted by requiring federally permitted dealers to report their purchases from fishing vessels. Dealers report these landings to NMFS on a weekly basis. These are the data NMFS uses to monitor landings of species managed under a quota system, such as summer flounder. In accommodating the normal business activities of dealers and still meet our quota monitoring needs, we allow dealers to report only summaries of their purchases of quota managed species within this time schedule. The dealers then follow up these summaries with complete and detailed reports of all species purchased. This later data set is used to validate the weekly summaries. The FMP

is a joint plan with the Atlantic States Marine Fisheries Commission (ASMFC), and states are encouraged to implement systems for coordinating statistical efforts. The Council and ASMFC are considering making this a requirement in the draft amendment ten to the FMP for summer flounder, scup, and black sea bass fisheries.

Some states, such as North Carolina, already have in place detailed data collection programs. However, none of these programs are able to collect and process data fast enough to allow for their use in quota monitoring. Thus, NMFS continues to collect the weekly summaries from all federally-permitted dealers. For the states that have a detailed collection system, such as a trip ticket system, the detailed reports of all species are provided to the state agency instead of NMFS. This detailed information is later shared between the state and NMFS and is used to validate the weekly summaries. As noted, this has not been accomplished with data collected by NCDMF.

*Question.* Please explain the basis for the quick closures of the summer flounder fisheries in 1997.

*Answer.* The 1997 commercial quota was set at 11,111,298 pounds and the states instituted a variety of management measures to control how their allocation would be harvested. NMFS has closed Maine and Delaware to commercial harvest in 1997. In other cases, the states themselves have established both seasons and trip limits to extend their quota, distribute catches to various fleet sectors and maximize market values. When the 1997 fishery opened in January, some states effected seasonal closures quickly because the trip limits had been set too high to significantly constrain the fishery. For instance, North Carolina set a trip limit of 10,000 pounds and closed its initial open season in 10 days. Similarly, Virginia established a 9,000-pound trip limit, which was reduced to 5,000 pounds, and closed its initial open season in 3 weeks. In contrast, other states have set lower initial trip limits and have adjusted these limits downward to remain open. For instance, New York opened with an initial trip limit of 2,000 pounds. This limit was changed to 700 pounds in mid-January, was increased again to 2,000 pounds for 2 weeks in February, and remained at 700 pounds until early April, when the trip limit was set at 200 pounds. As a result, New York State has not yet been closed to summer flounder harvest.

#### STRIPED BASS

*Question.* Fishermen have informed me that there are a record number of striped bass off North Carolina. Has this stock been determined "rebuilt" and "recovered." If so, when can we expect to see a larger commercial, coastwide quota? If not, please explain how NMFS determines when this fishery is fully recovered or rebuilt, and please provide a time estimate based on current trends in the resource.

*Answer.* Historically, over 90 percent of striped bass landings have been taken in state waters; therefore, ASMFC is the lead agency for striped bass management. NMFS supports the ASMFC Fishery Management Plan for Striped Bass and has actively participated in the management process since passage of the Atlantic Striped Bass Conservation Act in 1984.

All striped bass stocks, with the exception of the Roanoke/Albemarle system stocks, have been treated as "fully recovered" by ASMFC since 1995. The fishing mortality rate ( $F$ ) at which the recovered population can be fished and maintained at a healthy level was determined to be  $F=0.50$ . However, as a precaution, ASMFC chose  $F=0.4$  as the preferred long-term mortality rate and, based on concerns about accuracy of the measured  $F$ , selected an even more conservative "interim" rate of  $F=0.33$  for the 1995–1997 fishing seasons.

The ASMFC Striped Bass Stock Assessment and Technical Committees review the status of striped bass annually based on analyses of fishery-dependent and fishery-independent data. Beginning in 1997 (for the 1998 fishery), the basis for the stock assessment and recommendations to management is scheduled to shift from a spawning stock biomass model to virtual population analysis (VPA). The VPA will allow determination of a coastwide quota based on the most recent data available. This quota will then be allocated among each of the Atlantic coastal states and then among the respective user groups (commercial, recreational/charter) within each state. Allocation of each state's quota between recreational and commercial fishermen is a state responsibility. Even though the stock is determined to be fully recovered, annual quotas could rise or fall depending on the abundance of the component age classes.

*Question.* There is some evidence that the larger striped bass population may be having a negative effect on the recovery of North Carolina shad fishery. What steps has NMFS taken to investigate the relationship between the growth in striped bass and the slow recovery of other species?

Answer. There have been suggestions, based on inverse trends in abundance of striped bass and other species (e.g., shad, river herring, bluefish), that the recovery of striped bass populations has resulted in declines in stocks of other species. To date, no scientific studies have been conducted which definitively demonstrate a cause-and-effect relationship for these trends (i.e., specific ecological interactions which account for these apparent relationships). Observations of large numbers of striped bass feeding on shad at the base of dams have led to the suggestion that striped bass predation might have contributed to the decline of the Connecticut River shad population and/or delayed its recovery. However, studies have not been adequate to validate the extent to which this interaction may account for observed trends in abundance.

NMFS is currently funding research, through Rutgers University, which will address the issue of interactions between striped bass and bluefish, and their prey species. This effort will include laboratory and field studies to determine: when and where the species overlap, what life stage/age/size classes co-occur, the potential for competition for prey species, and the extent of the predator-prey relationship between the two species. Results of this research may be helpful in designing studies to address similar relationships between striped bass and other stocks, such as North Carolina's shad stocks.

#### CONCLUSION OF HEARINGS

Senator GREGG. If there is nothing further, the subcommittee is recessed.

[Whereupon, at 3:11 p.m., Thursday, April 24, the hearings were concluded, and the subcommittee was recessed, to reconvene subject to the call of the Chair.]



**DEPARTMENTS OF COMMERCE, JUSTICE, AND  
STATE, THE JUDICIARY, AND RELATED  
AGENCIES APPROPRIATIONS FOR FISCAL  
YEAR 1998**

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U.S. SENATE,  
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,  
*Washington, DC.*

**NONDEPARTMENTAL WITNESSES**

The following testimonies were received by the Subcommittee on Commerce, Justice, and State, the Judiciary, and Related Agencies for inclusion in the record. The submitted materials relate to the fiscal year 1998 budget request for programs within the subcommittee's jurisdiction.

PREPARED STATEMENT OF SHIRLEY MOUNT HUFSTEDLER, CHAIR, U.S. COMMISSION  
ON IMMIGRATION REFORM

The Commission on Immigration Reform was created by the Immigration Act of 1990. We are a fully bipartisan body. There are eight Commissioners who were appointed by the majority and minority leadership in each house of Congress. The President appoints the Chair.

When the President asked me to chair this bipartisan Congressional commission, he emphasized that immigration reform must be based on principles that are "pro-family, pro-work, and pro-naturalization." I accepted the task because developing and implementing immigration policies are of vital importance to the nation and to the many thousands of human beings who seek to live and work here.

The nation and the Commission itself have been immeasurably assisted by the outstanding leadership of the late Barbara Jordan, who was my predecessor as Chair of the Commission. I hope to carry forward her legacy of principled bipartisanship.

I shall describe briefly the recommendations the Commission has already made. Then I shall turn to our plans for this fiscal year and our plans for completing the Commission's work before our authorization expires at midnight December 31, 1997.

The Commission has issued two reports to Congress. In September 1994, the Commission published "U.S. Immigration Policy: Restoring Credibility." This report included recommendations for a comprehensive strategy to deter illegal immigration. In June 1995, the Commission made a second report to Congress "Legal Immigration: Setting Priorities." This report focused on reforming our system for legal admissions to serve our highest national priorities.

Later this spring, the Commission will make recommendations on U.S. refugee policy for a post-Cold War world. The recommendations in this report will support a comprehensive and coherent U.S. refugee policy to permit the U.S. to assert leadership internationally and implement responsible programs domestically. The Commission will make specific recommendations to enable the U.S. government to stay attuned to the causes of refugee movements, including efforts to prevent them early on through political, diplomatic, and economic initiatives. We will focus on assistance and protection for the millions of refugees overseas who are forced to leave their countries. The Commission will recommend reforms to ensure that the United States will continue to lead by example not only in resettling refugees, but also in providing sensible transitional assistance for those few refugees for whom U.S. resettlement is the only or best option. The Commission will also make recommenda-

tions regarding a viable plan to respond to mass migration emergencies directed at our own nation. Finally, the Commission will recommend an effective asylum system that protects the bonafide refugee while deterring those who would abuse it.

This summer, the Commission will receive the results of two major research contracts. One study will be issued by the National Academy of Sciences, from the Panel on Demographic and Economic Impacts of Immigration of the National Research Council Committee on Population & Committee on National Statistics. This has been a 30-month study of the demographic and economic impact of immigration on the United States.

The second report will be the results of the Binational Study on Migration between the United States and Mexico, for which this Commission has been the lead U.S. agency. After a meeting of the Migration and Consular Affairs Group of the Mexican-United States Binational Commission in March 1995, the governments of Mexico and the United States decided to undertake a joint study of migration between the two countries. Research teams in each country are studying aspects of migration within their country and are collaboratively analyzing the findings. National coordinators have been designated for each country with the Commission on Immigration Reform coordinating the work of U.S. researchers. The main objective of the Binational Study is to contribute to a better understanding and appreciation of the nature, dimensions, and consequences of migration from Mexico to the United States. It also provides an opportunity to identify options to respond to these movements.

The Commission's Final Report is due September 30, 1997. There will be four main components for this report, in fulfilling the Commission's mandate in the Immigration Act of 1990. First, the Commission will assess the effort to control illegal immigration, paying particular attention to monitoring the implementation and effects of last year's legislation. To the extent that the evidence is sufficient to draw conclusions, the Commission may make recommendations for changes in our comprehensive approach to deter illegal immigration.

Second, the Commission will also re-assess the need for legal immigration reforms. In "Setting Priorities," the Commission asserted that "Properly regulated, legal immigration serves the national interest in many ways"; and provided a framework for determining if our legal immigration system is effectively serving the national interest. The Commission also urged that U.S. immigration policy be assessed on a regular basis every few years, and it has been nearly two years since the recommendations in "Setting Priorities." Accordingly, there will be such an assessment in the Commission's Final Report, which will also include new recommendations on the non-immigrant visa system.

Third, the Commission will make recommendations regarding the structure, organization and management of the immigration system as a whole. The Commission is examining systematically the roles and relationships of the federal agencies responsible for the management and implementation of immigration policy. Responsibilities are now dispersed across four principal Cabinet agencies: Departments of Justice, State, Labor and Health and Human Services. Within each of these departments, responsibility is further dispersed. Even within a single agency, such as the Immigration and Naturalization Service, competing and sometimes conflicting responsibilities (such as service and enforcement) must be balanced and coordinated. The Commission will report to Congress on the strengths and weaknesses of the current system as well as make recommendations to improve management of immigration-related activities.

Fourth, the Commission will make recommendations regarding Americanization: the economic and social integration of immigrants. The Commission argued, in its fiscal year 1995 report to Congress, for the Americanization of new immigrants, that is, the cultivation of a shared commitment to the American values of liberty, democracy and equal opportunity. For its final report, the Commission is examining policies and programs that may foster or retard such Americanization.

In fiscal 1998, the Commission will complete its work and close down by the end of calendar 1997. There are two principal functions to perform. First, the Commission will fulfill its statutory mandate to testify before the relevant Congressional committees. In addition, we will disseminate the final report and recommendations to interested federal agencies, members of Congress, and members of the public. Second, the Commission will complete its administrative operations, including archiving records of historical significance, the disposal of equipment, termination of employment and completion of financial accounting.

The attached budget justification presents details of this appropriation request. I thank you again for this opportunity to discuss the work and recommendations of the Commission on Immigration Reform. I would also like to state for the record our commitment to work with this Committee as you address the very challenging

issues arising in the appropriation of funds to improve implementation of immigration policy. The Commission is the creation of Congress and, as it completes its work, I offer the Commission to you as a resource to help you in your work.

PREPARED STATEMENT OF F.A. (TEX) HARRIS, PRESIDENT, AMERICAN FOREIGN SERVICE ASSOCIATION

Mr. Chairman and Members of the Subcommittee: We appreciate the opportunity provided the American Foreign Service Association (AFSA) to provide testimony to the Subcommittee regarding the 1998 fiscal appropriations for the Department of Commerce, Justice, State and the Judiciary. AFSA is both the professional organization and the recognized bargaining agent representing the 23,000 active and retired members of our Nation's Foreign Service. AFSA and its members have a particular interest in this legislation because of the direct affect it has on our professional and personal lives.

We believe there is general agreement that it is in our national interest for our Nation to continue to be actively engaged in the in the world, and that in doing so, we should continue to provide leadership. This consensus is based upon a recognition that so much that affects our daily lives happens outside of our borders. The growth of our economy depends as much on our ability to successfully engage in international trade as it does on what happens domestically. International crime, terrorism, and the flow of drugs plague our nation without any recognition of borders. Environmental degradation can take place in far off our shores still harm our health. Starvation and civil strife in one area of the world can create huge migration flows that end up affecting life in the U.S. through illegal immigration or in the need to fund efforts to help save lives. The spread of weapons of mass destruction and outbreak of regional wars continue to threaten the stability of the world.

While there is general agreement that the United States should maintain its international leadership role, there is disagreement over the level of resources we have provided in the past and what the necessary levels should be in the coming years. The recent study by the special Task Force of the Council on Foreign Relations and the Brookings Institution found resource problems at two levels that "disheartens our friends and allies and undermines our effectiveness abroad \* \* \*"

At one level of high policy, the severely limited lack of readily available, flexible resources effect the options available to avert or respond to foreign crises. We hear this daily from our members around the world. To stabilize Haiti, the decision had to be made to reduce economic support for Turkey despite its critical relationship to our Middle East interests and also transfer funds from other Latin American AID projects.

Providing our share of the financing package assembled for Cambodia's first free election required deferring, for more than a year, support for smaller initiatives in a dozen or so other countries. Responding to the refugee crisis in Rwanda meant taking funds for democratic institution-building from the rest of Africa at a moment when positive trends were emerging elsewhere on the continent. When the United States needed \$2 million to monitor a cease-fire between the Kurdish factions in northern Iraq, ready money was not immediately available, the situation deteriorated, and Saddam Hussein was afforded a pretext to send forces into northern Iraq—a move which culminated in U.S. military action costing multiples of the originally needed sum.

However, at a second level, evidence of the lowering of the U.S. flag around the world shows up in reports to us each day in large and small examples. The scarcity of resources impacts on our ability to conduct the basics of promoting and protecting our interests around the world. Perhaps individually some of these examples might be passed over. However, cumulatively they become clear signs of the decline of America's diplomatic influence. We get reports everyday underscoring the deterioration of our Nation's diplomatic infrastructure. For example:

—In the Consular field, tight budgets over the years have been steadily eroding the ability of consular sections (and passport agencies) to deliver the kinds of every-day services to American and foreign publics that most people had come to take for granted. Consular officers have done more with less for so long that we have forgotten that this used to be a business with some civility and humanity built into it. Now, its like operating a meat-packing plant. In 1962, consular officers overseas handled about 2,000,000 consular services in the major categories. There were 536 officers overseas to do it. By 1972, 494 officers did over 4,000,000 services. By 1977, 603 officers did 7,000,000. And in 1993, 634 officers did 10,000,000 services in the same major categories of non-immigrant visas, immigrant visas, passport and citizenship, and protection and services for

American citizens. Further, we hear concerns from our members that travel funds are insufficient to do necessary American citizen protection work or anti-fraud field investigations. Immigrant visa cases of questionable pedigree just get stacked up for months until sufficient time and resources are available to examine them. These examples underscore the importance of the Department of State fee retention initiative which our dedicated consular staffs urgently need. This initiative is also compatible with the "Consular Strategies for the Future" initiative which AFSA developed and approved late last year.

- Our members do not have funds for international business phone calls in many posts. They must send faxes and ask American businesses to call them back the next day to pursue business leads. Other nations' embassies speed dial their business calls. One of our members could not get full funding to attend an important conference. So in order to attend, he stayed with a foreign diplomat with whom he was friends as his embassy could not provide funds for a hotel. The air conditioning in our Embassy in Seoul shuts down at six p.m. each work day. People cannot stay late in the sweltering heat to finish their work on their own time. Others posts cannot afford to provide heating. In Tbilisi, Georgia the heat in Embassy homes is shut off at ten PM each night to save fuel. In Paris, the Embassy can no longer afford to provide light bulbs to employees living in apartments wired for 110 volts and the bulbs are not available on the local market.
- The list goes on. We are aware of the lack of funding to support the "Summit of the Americas" initiative that is especially important for our export and trade relations. Because of the overwhelming diversion of personnel resources to Bosnia and the other areas involved in the former Yugoslavia conflicts, we do not have the personnel sufficient to do all the important preparatory work to support the Organization for Security and Cooperation initiatives and fulfill our convention arms control agreements. There is a great unmet need to build up our facilities and expertise for the proposed "China 2000" initiative to improve the resources available to strengthen our relationship with that great nation as we move toward the 21st Century. An AFSA member has started a web page in Beijing showing the substandard living conditions that Foreign Service employees endure there.
- We have failed to take in sufficient numbers of Junior Officers and specialists to meet the future needs of American diplomacy. The Foreign Service Exam in 1995 was canceled to save funds. Our officers state that professionally they live in an age of triage. The hard job is deciding what cannot be done. The signs of the decline of American diplomacy goes on and on. We do not have enough funds to do needed jobs throughout the world.

Mr. Chairman, the Administration has requested a 4 percent increase in the Administration of Foreign Affairs account of the State Department's appropriations request—a request that is barely above the inflation rate and a large portion of which will go for communications and information hardware improvements. This Presidential request is understandable in the context of balancing the budget and what OMB views as the competing claims for resources.

But from our "front line perspectives," this funding is not enough. The real need is much greater than just communication and information improvements, though that need is very real. We need more than just our facilities in Beijing improved. We need more than the planned 150 new general officers per year, and the Foreign Service exam should be given every year to assure an adequate number of potential candidates. Adequate intake is also needed for security in the form of Diplomatic Security agents, and other special functions. More funds for representation and travel for the smaller posts is needed, as well as greater funding for all types of training, but especially increases in management training and to increase the talent pool of officers skilled in the very hard languages such as Chinese.

Mr. Chairman, AFSA understands the constraints on available resources in the current budget climate. However, it must be realized that there are real world consequences when sufficient resources are not available for the advancement and protection of American interests around the world. We would never accept this decline in our military readiness; yet our diplomats stand at the very front lines around the world. We are in decline. We cannot succeed if we continue to try to do things "on the cheap."

Beyond funding, however, AFSA believes that certain management steps are necessary. As the Subcommittee supported and encouraged the Department to develop the ICASS system in lieu of the failed FAAS support method, and to develop an overseas staffing model, AFSA believes that more needs to be done to improve the management structure.

The foreign affairs agencies management should be encouraged to develop a needs based work force planning system. There is concern that the Foreign Service Act's Sec. 6091 personnel report provided to the Congress by the Department of State is both static and backward-looking. The report does not reflect either current or future staffing needs of the Department. Furthermore, AFSA believes that anomalies in the statistical data and their underlying assumptions have perpetuated a system whereby, unrelated to actual skills needs, experienced and effective Senior and middle grade officers are being involuntarily separated from the Service solely for having reached time-in-class (TIC) limits. The need for work force planning in all foreign affairs agencies is indicated by this case study from the Agency for International Development, Ninety-one Foreign Service Officers were separated from the Service through a reduction in force (RIF) in fiscal year 1996 because their skills were allegedly in surplus to USAID's workforce demands. Within five months, 30 of these RIFed employees were hired back as personal service contractors because USAID still needed the skills and the experience these people had. The dollar costs to the Agency and the human costs to all USAID's employees were very high and could have been avoided by good management.

AFSA believes that in an increasingly constrained resource environment, the Department should move to establish a true needs-based system of strategic personnel planning. Work force management in the agencies has been heavily concentrated on important, but narrow, personnel issues—assignments, promotions, recruiting—rather than fundamental needs, priorities and a systematic allocation of scarce personnel resources. Further, the State Department has moved too slowly to establish performance goals. Currently there is no system in place to quantify performance—to measure the success or failure to achieve goals. Without such objectives, adequate resource and personnel planning cannot be reasonably accomplished. USIA and USAID have at least attempted to install such systems.

Mr. Chairman and Members of the Subcommittee, in earlier testimony, Secretary of State Albright provided an eloquent litany of the work of the Foreign Service. She said that:

“We depend upon our diplomats to negotiate and verify the agreements that keep us safe from the spread of nuclear weapons. We rely on them to maintain day-to-day support for the peacemakers over the bomb-throwers in strategic areas of the world. We turn to them to build relationships with other nations that will enable us to protect our citizens from the scourge of drugs, the plague of crime, and the threat of terror.

“We ask them to help open new markets and assure fair treatment for American goods and services in a fiercely competitive global marketplace \* \* \*.

“We expect them to look behind the claims of dictators and despots and to report the truth about abuses of civil liberties and violations of human rights.

“We count on them to help Americans who are hurt or fall seriously ill or who are otherwise in need of a friendly voice in faraway lands.

“And we require them to provide support for other federal agencies \* \* \*.”

There is a most important job to be done in advancing and protecting U.S. interests abroad. It requires Foreign Service professionals with adequate resources and training to do the job. While they are exposed to exotic illnesses, personal security threats, family separation, the lack of decent education for their children, and other hardships for their families, they are there because America needs them and because they want to serve the country they love. As the Congress makes its decisions regarding this legislation, I trust that it will provide the necessary resources and support the Foreign Service needs and deserves.

Thank you for taking our views into consideration.

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#### PREPARED STATEMENT OF THE CENTER FOR MARINE CONSERVATION

The Center for Marine Conservation appreciates this opportunity to share our views regarding the President's fiscal year 1998 budget request for the marine conservation programs of the National Oceanic and Atmospheric Administration (NOAA).

The Center for Marine Conservation is committed to protecting ocean environments and conserving the global abundance and diversity of marine life. Through science-based advocacy, research and public education, CMC promotes informed citizen participation to reverse the degradation of our oceans. CMC is a nonprofit conservation organization with 120,000 contributing members, headquartered in Washington DC, with field and regional offices in California, Washington State, Florida and Virginia.

In general, we support the Administration's request for the marine conservation programs of NOAA as described under the agency's strategic plan goals: Build Sustainable Fisheries, \$332 million; Recover Protected Species, \$69.7 million; and, Sustain Healthy Coasts, \$212.2 million. Of particular interest are the marine conservation programs of the National Ocean Service (NOS) and National Marine Fisheries Service (NMFS). We urge the Senate Appropriations Committee to also support these funding levels and provide for the additional needs described below.

We also strongly urge the Appropriations Committee to allow the NMFS Office of Protected Resources to do its job in protecting threatened and endangered sea turtles from shrimp trawls. We ask the Committee to cease requiring the agency to waste precious resources by engaging in unnecessary activities as Congress has done in the last two fiscal years.

Just as the Interior Appropriations Subcommittee has jurisdiction over funding of stewardship of the nation's public lands, this Subcommittee has jurisdiction over funding for the stewardship of the Nation's public oceans. We refer to coastal waters and the Nation's exclusive economic zone (EEZ), those waters out to 200 miles off our shores. This is an area of approximately 3.4 million square miles, more than the area of the entire contiguous United States. Attached to this statement is a map of this area. Within this vast realm NOS and NMFS have responsibilities for natural resource management, pollution control and protection of threatened and endangered species and marine mammals.

The living marine resources of our public oceans are of extreme importance to our Nation. It is estimated that in 1994 the commercial fishing industry contributed a total \$20.2 billion to the U.S. Gross National Product. Limited analysis by NMFS estimates that almost 15 million people made over 66 million marine recreational fishing trips in 1994. It is estimated that marine recreational fishing contributes \$7 billion to the economy. The conservation of marine mammals and endangered marine species provide abundant recreational opportunities to millions of Americans annually. In the United States, more than 3 million people annually participate in whale-watching, generating more than \$230 million in direct and indirect revenue. Consequently, providing adequate funds today for the conservation and management of living marine resources will have both immediate and long-term benefits for the American people.

#### NATIONAL OCEAN SERVICE

##### *National Marine Sanctuary Program*

We urge the committee to provide \$15 million for this important program. This is an increase of \$1.8 million over the President's request and is the level authorized in last year's reauthorization legislation for the program. While we appreciate the President has requested an increase of more than \$1.5 million over the current year, we note that NOAA's justification document states the increase will only "partially fund the highest priority for the National Marine Sanctuary Program, which is to ensure that all designated sanctuaries achieve the basic operational level." We interpret this to mean that the program is not now meeting its basic operational requirements and that it will not, even with the proposed increase.

Often referred to as our marine parks, the 14 sanctuaries around the country encompass almost 19,000 square miles of the Nation's most significant marine resources. NOAA's justification document goes on to state that with current funding resource protection, supporting research and education efforts are inadequate and that without additional funding research shortfalls will hamper the agency's ability to manage these areas. An independent National Marine Sanctuary Program review panel recommended annual funding of \$30 million in 1990, a recommendation that was endorsed by NOAA's public advisory committee in 1992.

We also note that in 1997 and 1998 NOAA will begin implementing recently finalized management plans for the Florida Keys and Humpback Whale Sanctuaries, adding to the need for increased funding.

##### *South Florida Interagency Ecosystem Restoration Initiative*

We recommend that the Committee fully fund NOAA's portion of this vital initiative for the coming fiscal year. The \$3.8 million requested by NOAA, a small portion of the overall request for the Initiative, and split between NOS and the NOAA's Coastal Ocean Program, will allow NOAA to fully implement its integrated ecosystem monitoring program, in partnership with state and local agencies and academic institutions, in Florida Bay and the Florida Keys National Marine Sanctuary. These waters are the downstream end of the South Florida ecosystem and thus are affected by the activities of other agencies working to restore and protect the Ever-

glades. The monitoring program will help the agency model and assess changes to the marine resources of Florida Bay and the Florida Keys coral reef system.

*The Control of Polluted Runoff to Coastal Waters*

We urge the Committee to provide \$4 million for the polluted runoff control program for coastal waters, section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA). This program has been unfunded for the last two fiscal years and the President has requested only \$1 million for fiscal year 1998. Polluted runoff is the largest source of coastal pollution to the Nation's coastal waters and is responsible for beach closures and shell fish bed closures.

Section 6217 promotes reducing polluted runoff to coastal waters through better government coordination. There are few enforceable controls on this massive source of coastal pollution. Section 6217 is the only nation program to ensure that if voluntary measures taken to reduce polluted runoff are ineffective, the State has enforceable backup authority to protect coastal waters.

States are making significant progress under CZARA and are uncovering important opportunities and authorities to address coastal runoff not previously identified or used. They have identified measures to reduce coastal pollution and restore critical coastal habitats vital to commercial and recreational fisheries, threatened and endangered species, wildlife and public health.

The Nation's 6217 program has now reached a critical stage where adequate funding is absolutely necessary to ensure states and territories have resources to finalize their programs. Twenty-nine coastal states and territories have submitted programs to NOAA and the Environmental Protection Agency for final review and approval. Fourteen of these programs have already been conditionally approved, but there remains a great deal of work to be done. Additional funds are essential so that states and territories can finalize programs and measures necessary to satisfy federal guidelines and conditions.

NATIONAL MARINE FISHERIES SERVICE

*Resource Information*

For the Resource Information line item we applaud the Administration's request for an additional \$1.67 million in funding to conduct research and develop technologies to deal with the critical issue of bycatch. However, we are concerned that this line item is underfunded in the budget request in light of the tremendous need for more timely stock assessments for marine fisheries and other living marine resources.

NOAA's justification shows the agency anticipates little or no progress on stock assessments for fiscal year 1998 when the recently reauthorized Fisheries Conservation and Management Act requires the agency to make annual reports on what stocks are overfished. The agency currently classifies the utilization of 31 percent of fish stocks as unknown. It is also behind in updating assessments of other important stocks. For example, NMFS is woefully behind in conducting a stock assessment on the spiny dogfish along in the Atlantic. This is a small shark that lacks a management plan and for which fishing pressure has increased dramatically as fishers seek alternatives to other depleted fisheries. Many scientists and fishermen think it is likely overfished at this time. The stock, however, is currently considered near full exploitation from a 1994 stock assessment, based upon 1993 data.

NOAA also reports that for 1995 the status of 65 percent of marine mammal and sea turtle populations is unknown. Given the problems of high mortalities of endangered right whales off the east coast in 1996 we recommend that the Committee retain the current level of funding for Right Whale Research as opposed to cutting it by \$50,000 as the President has proposed. Similarly, given the uncertainty as to the cause of decline of Steller sea lions off Alaska, and need to determine whether the fishery is the reason, we think it is unwise to cut this research by \$330,000 or 19 percent as the President has proposed. We do however credit the Administration for maintaining funding for New England stock depletion research and the Gulf of Maine groundfish survey.

*Fisheries Management Activities*

We support the Administration's requested increase of \$8.9 million for this line item. For the first time our Nation's principle federal fisheries management legislation—reauthorized last fall as the Magnuson-Stevens Fisheries Conservation and Management Act (FCMA), enacted as the Sustainable Fisheries Act—directly addresses the issues of overfishing, bycatch and essential fish habitat. Under the FCMA, the regional fishery management councils and NMFS are required to adopt or amend fishery management plans that: (1) identify overfished stocks and stocks approaching an over fished condition, and prevent or eliminate overfishing and re-

build overfished stocks; (2) avoid bycatch and minimize the mortality of unavoidable bycatch; and (3) identify, designate and protect essential fish habitat, including minimizing adverse effects on essential fish habitat caused by fishing and consulting with federal agencies proposing activities that may adversely affect such habitat.

For the fishery management councils to carry out their duties under the FCMA the Administration has requested an increase of \$1.5 million. While this figure may not be adequate for the revision of 39 fishery management plans to bring them into compliance with the FCMA, it is a significant step in the right direction. The remaining \$7.3 million increase will be used by NMFS to fulfill its new responsibilities under the Act including the extremely important Essential Fish Habitat provisions.

While we support the increases, we do question the decreases of \$550,000 proposed for International Fisheries Commissions and \$400,000 proposed for Pacific Tuna Management and urge the Committee to maintain funding at current levels. In the Pacific, longline fleets from other nations are increasing their fishing power exponentially. In order to conserve this resource we must be able to meet in fishery management forums to discuss conservation measures.

We would like to highlight another issue that is not dealt with in the President's request and one we urge the Committee to take no action on. The issue is bycatch in the Gulf of Mexico shrimp trawl fishery and the need for this fishery to abide by the requirements of the FCMA just as all other fisheries must do. There is also an urgent need to protect the ecosystem of the Gulf and restore its depleted finfish fisheries. At its March meeting of this year the Gulf Fishery Management Council folded to political pressure from the shrimp industry and its political allies in Congress to back off on its previously approved requirement for shrimp trawls to use bycatch reduction devices (BRD's). The Council asked NMFS to delay implementation of this requirement by one year, effectively reversing its action of November of last year in voting to require the use of BRD's. The Council took this action reluctantly, in response to threats from Congress to impose a moratorium on the ability of NMFS to require BRD's in the Gulf and/or eliminate all funding related to this requirement unless implementation of BRD rules is delayed.

The causal relationship between shrimp trawl bycatch and the decline of red snapper, which are overfished, has been clearly established. Over many years \$7.5 million of taxpayer money has been spent on bycatch characterization, BRD development, and social and economic research. Research done in cooperation with the shrimp industry shows clearly that BRD's can reduce shrimp trawl bycatch of red snapper by 66 percent while retaining 97 percent of shrimp on average.

CMC is currently urging NMFS to implement the BRD's requirements as required by the FCMA and urges the Appropriations Committee take no action to block the agency from carrying out its duty.

#### *Protected Species Management*

CMC appreciates the Administration's requested increase of \$7.7 million and 45 additional staff positions for Protected Species Management, but we feel this increase is inadequate. We recommend an additional \$8.5 million for the Marine Mammal Protection Act and \$4 million for Endangered Species Act recovery plans.

NOAA's justification document clearly spells out the need for additional funds. The agency states that for 80 percent of marine mammal populations it currently has insufficient information for which to make a negligible impact determination. Thus NOAA has to set more conservative take levels than may otherwise be necessary and which place additional restrictions on commercial activities. NOAA states clearly that it needs funds to gather the data necessary to make conservation decisions. In 1994 testimony before Congress NMFS stated that an annual appropriation of \$18 million was required to implement the Marine Mammal Protection Act (MMPA). We recommend that the Committee provide \$18 million for implementation of MMPA to ensure adequate stock assessment and take reduction plan implementation.

Most of the additional funds, \$6.7 million, in the Administration's request are slated for actions needed to develop and implement recovery plans for Pacific salmon populations. While CMC does not oppose this increase, we are concerned that for the last several years this issue has drawn off the bulk of resources available within NMFS for Endangered Species Act plans and that the additional increase slated for whales and sea turtles is not adequate. We support NMFS's intention to direct funds to protect the critically endangered right whale from ship strikes and gear entanglement and to implement the Pacific sea turtle recovery plan. The need for these additional funds is made clear when NOAA states clearly that current funding is inadequate to respond to the Endangered Species Act requirements to protect marine species while minimizing economic impacts of conservation actions.

Unfortunately NMFS's ability to carry out protected species responsibilities has been hampered by Congressional attempts to further delay the protection of threatened and endangered sea turtles from the shrimp trawl fishery in the Gulf of Mexico. For the last two years Congress has included report language that required NMFS to conduct redundant activities to justify the need for Turtle Excluder Devices and divert needed funding from other protected species activities. One activity potentially affected is the badly needed Hawaii longline observer program. Pacific leatherback sea turtle populations are critically endangered and this program is essential to identifying ways to reduce takes to avoid the development of an ESA crisis.

We are providing the Subcommittee with numerous copies of CMC's report *Delay and Denial: A Political History of Sea Turtles and Shrimp Fishing*, which documents the long and tortured process by which TED's were required to protect threatened and endangered sea turtles. Nearly 24 years passed from the time that the Kemp's ridley sea turtle was listed as endangered and the time that TED's were required in all shrimp trawls. When Congress last inserted itself in this issue, in 1988, the National Academy of Sciences report Congress mandated strongly endorsed TED requirements to reduce sea turtle mortality in shrimp trawls.

Despite pressure from Congress not to do so NMFS has recently issued revised rules under the Endangered Species Act decertifying less effective soft TED's to protect threatened and endangered sea turtles in light of increased mortality over the last few years.

We strongly urge the Appropriations Committee and Congress to cease their interference and to allow the agency to do its job in protecting sea turtles in a manner that allows the shrimp fishery to continue operation.

#### *Habitat Conservation*

CMC supports the Administration's requested \$1.8 million increase in Habitat Conservation in light of new authority granted NMFS and the regional fishery management councils to influence federal decisions affecting fisheries habitats. CMC also supports the agency's efforts at completing Habitat Conservation Plans to protect salmon spawning habitat on the west coast.

#### *Enforcement and Surveillance*

CMC supports the Administration's proposed \$1.7 million increase for enforcement. The enactment of the new provisions of the FCMA will require greater enforcement effort from NMFS. In addition, the agency has recently finalized regulations to conserve Atlantic sharks and sea turtles in the Gulf of Mexico and South Atlantic. Also the recovery of New England groundfish stocks will require increased enforcement to ensure compliance with the requirements of Amendment 7 to the multispecies management plan. Of great interest in New England is NMFS' work to implement the use of advanced vessel monitoring systems to both make enforcement more efficient as well as less burdensome on fishermen.

#### *Acquisition of Data*

CMC is very concerned about the Administration's proposed 6 percent cut in the acquisition of data. We urge the Committee to reject this cut of \$1.74 million. It makes no sense to reduce days-at-sea of NOAA's fisheries research vessels when the agency is severely lacking data essential to the sound management of the Nation's living marine resources. Data are required for assessments of fish and marine mammal populations. The increased reporting on the status of fish stocks required to update 39 fishery management plans only increases the need for a greater number of days-at-sea to conduct assessments.

NMFS estimates that it needs a total of more than 4,400 days-at-sea and is currently able to support only 3,600 days at sea. These days-at-sea are provided by combination of NOAA vessels, charters and through state and foreign cooperation.

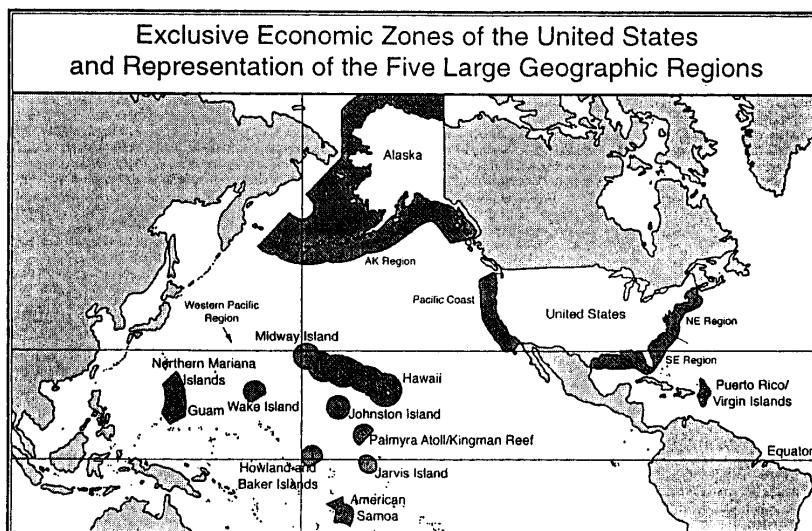
#### *Fleet Maintenance and Planning*

CMC supports the Administration request of \$11.8 million. We note that while NOAA is seeking no funds for the new vessel construction in fiscal year 1998 the agency is planning to begin design work for a new class of acoustically quiet fisheries research vessels. NOAA's dedicated fishery research fleet is aging and inefficient to operate. We recommend that replacement of the current fleet move forward in a manner that will allow the agency to utilize properly designed and equipped ships to complete its mission. It matters not whether these new vessels be owned and operated by NOAA. That determination can be made on the basis of cost to the taxpayer.

## MARINE MAMMAL COMMISSION

In addition to the marine conservation programs of NOAA, we urge the Committee to increase funding for the independent Marine Mammal Commission. We urge the Committee to provide \$1.35 million in fiscal year 1998. A fully funded Commission is a source of rational and constructive scientific advice on marine mammal protection issues. Many of these issues could become contentious absent the Commission's analysis. The President has requested \$1.24 million which is an increase of \$51,000 over current funding. For the last two years the Commission has only been able to function at a minimal level, unable to carry out an independent research program. The funding level we are recommending would boost funding to a level approaching the Commission's fiscal year 1995 budget and enable it to conduct needed research.

This concludes our statement.



PREPARED STATEMENT OF LLOYD Q. DOWDELL, PRESIDENT, ADVANCED TELECOMM. TECH., INC.

Mr. Chairman, I respectfully submit testimony on behalf of ATTI, a small R&D Telecommunications Company located in Belleville, New Jersey. ATTI has for the last six years committed its resources toward its mission to help address a top concern of Americans—the incidence of crime and violence in our society. In the company's effort to combat violence, ATTI has worked with members of Congress and prison officials to provide cost-effective learning systems and programs to aid Corrections officials in reducing recidivism.

This testimony requests your support for the formation of a nine-state youth violence prevention network. Using the latest and most innovative computer and technology infrastructure, ATTI's network will connect nine or more of the largest cities in Ohio, Illinois, New Jersey, New York, Pennsylvania, Connecticut, Florida, California and Kentucky. ATTI's network will collaborate with state universities, colleges, teaching hospitals, libraries, churches, community centers, municipalities, YMCA's and YWCA's and other community organizations.

ATTI will offer network links to Youth Correctional Facilities to provide training to incarcerated youth and provide access to aftercare in conjunction with churches and other community based organizations. Much of the company's training efforts will be directed towards at-risk youth. ATTI's network will focus on foundation skills for these youth, especially dropouts. Working with community colleges and the local school districts, ATTI's Basic Skills component will cover reading, writing, arithmetic and mathematics, listening, and speaking. Our Thinking Skills component involves various decision-making and problem-solving strategies through authentic tasks. ATTI's Personal Qualities component involves students learning re-

sponsibility, self-esteem, self-management, integrity, sociability and behavioral modification skills. ATTI's program will be delivered to housing facilities in the targeted areas.

As Americans, ATTI and its collaborative partners' mission, is to intervene in the lives of at-risk youth; delinquents and youths involved in the criminal justice system—to help provide this targeted population with the skills competency that students need for success in the modern workplace and to become productive citizens.

*Mission Statement.*—ATTI's mission is to save lives, reduce crime, violence, and save prison costs to taxpayers and to use human and capital resources to enhance and empower individuals with the essentials to take care of their families and to be good citizens.

*Vision.*—To help eliminate poverty and to participate meaningfully in revitalizing urban areas and those in need.

*Goal.*—To empower individuals seeking to improve their life with assistance to become self-sufficient.

*Objective.*—To work in partnership with the private, public and religious sectors to strengthen America and its inner cities.

Hence, we have identified several areas of intervention consistent with the May, 1996 Rand Study: Diverting Children From A Life Of Crime. ATTI's initiative, at an intervention of 2,000 individuals, can save each state approximately \$330 million in crime and violence related costs over a period of 5 years.

According to a study released in April, 1995 by the Department of Justice (DOJ), 1.6 million individuals are incarcerated in the United States and another 1 million is involved in the criminal justice system. In terms of violence, a separate DOJ study estimates that the price of violence and crime cost Americans some \$460 billion annually.

The Rand research brief, Diverting Children From A Life Of Crime: What Are The Costs And Benefits, states that although headlines show crime rates falling, in 1996, there was still likely one violent crime committed for every 130 U.S. citizens—a rate several times that in other industrialized democracies. The report goes on to say that despite the seriousness of America's crime problem, most of the money and effort devoted to solving it are restricted to one approach—incarcerating persons who have already committed crimes. Much less attention has been paid to diverting youths that have not yet committed crimes from doing so.

This is what makes ATTI's comprehensive collaborative project so unique in helping to reduce crime among youth and to help make Americans safe. First, ATTI will not only deploy the most advanced cost-effective technology (through distance learning) initiatives and on-site training, but also, ATTI's network will tie-in to state operated youth facilities and at-risk youth sites in neighborhoods. In other words, ATTI's initiative will cover both the youths in and outside youth facilities.

The United States now leads the industrialized world in prison population. The prison buildup has not come cheaply. According to a February 7, 1994 Time Magazine report, the average annual cost per inmate is \$23,500 and the average cost per bed in maximum-security facilities is \$74,862. Ohio leads the pack with its prisons operating at 182 percent of capacity. This demonstration project is aimed at reducing costs, recidivism, and violence as previously mentioned.

As Founder of ATTI, I have committed over \$600,000 to research and evaluation in over 20 states, to assess the problem and discover what works. The company's research reveals that almost all of the prisons lack mandatory education programs that lead to a GED in spite of clear statistics that show a direct correlation between illiteracy and crime. We also discovered that almost 90 percent of incarcerated individuals lack a high school diploma or a GED certificate, and it was indeed this group that was causing most of the crime and violence (illiterate repeat offenders).

The statistics on violence, as you know Mr. Chairman, points to an emergency that threatens the future of this generation, our state, and our nation. The loss of human potential, the pain and suffering of families and acquaintances is enormous; and the spiraling, negative impact on the educational and health care systems, as well as businesses, demands our attention.

Teenagers commit almost a fifth of violent crimes. Consistent with this reality, a significant number of ATTI's programs, services, and research pertains to the youth population. This project will further address this issue by offering youth detention centers ATTI's comprehensive programs.

Violence prevention research is very much in its infancy. An overwhelming proportion of violence prevention efforts ongoing have not been evaluated nor has there been attention to what works best for whom. There is a need to attain a better understanding of risk and protective factors across populations, empirically establish the efficacy of preventive interventions, explore the individual, community, organizational, and cultural characteristics that moderate risk and intervention outcomes,

and evolve guidelines and strategies for successful implementation and dissemination.

ATTI, in collaboration with Harvard University Medical School, the University of Medicine and Dentistry of New Jersey and other prominent universities, proposes to develop, implement, and evaluate a multifaceted program designed to reduce crime, violence and delinquency. The collaboration will also address health and behavioral problems, enhance social skill competence, foster safer and healthier minds, increase education and create a renewed sense of hope and empowerment on the part of our targeted population from inner cities, especially youths at-risk.

ATTI's initiative, with hospitals/academic partners, will also provide in-service teacher training to enable teachers to better deal with the epidemic of school-based violence and its associated causes. ATTI's connection to community policing initiatives disseminated to local school districts will help bring better cooperation between kids and law enforcement. A comprehensive system of school-based, school-linked and community based services (including health professionals) will be put together based on an organizational assessment involving the collection of data from all levels of the community, including parents and teens located in high rise apartment complexes and crime riddled neighborhoods.

Funding for this demonstration program will accomplish and fulfill two very important needs. First, it will lead to the abatement of crime in targeted areas. It will also position this collaborative effort for private funding if Congress cannot appropriate for this initiative beyond the first year. ATTI's activities will involve a primary, but not exclusive, focus on violence prevention and control, given the fact that overall well-being impacts risk for violence. The interrelated services will emphasize the cognitive, effective, skills building and environmental elements of violence prevention, emphasizing the development of competencies essential not only to violence prevention but to the promotion of personal academic success as well. All components will be designed with the intent of strengthening the organizations' internal resources and linkages with existing and new community resources.

The Department of Education reports that approximately 200,000 high school students drop out each year. Research shows that large proportions of dropouts become juvenile delinquents and eventually invade our criminal justice system. Without effective countermeasures, like ATTI's proposal, this problem will exacerbate in light of Senator Hatch and Daschle's youth crime bills introduced early this year. States spend an estimated \$10,000 per year to educate a student in ATTI's targeted areas. When incarcerated, states spend approximately \$23,000 to \$30,000 annually to care for these individuals, our program will save states about \$26,000 per individual. Teacher and administrative salaries account for 90 percent of the educational cost among prison schools. Due to the acute rise in the prison population, educational programs are available to a limited number of inmates for budgetary reasons. The few that are enrolled in educational programs often have to delay completing their education due to funding cuts.

There are several other factors that may contribute to the lack of meaningful education programs in jails and prisons nationwide. Nevertheless, it would be disingenuous for one to believe that we can reduce recidivism and crime by rehabilitating the inmates when educational programs are unfunded. I have worked with members of Congress to gain support for an amendment to the recent crime bill. This amendment mandates that federal prisoners acquire at least a high school equivalency diploma (GED) before they can qualify for early release. This will fall on deaf ears unless we utilize innovative approaches as described above.

Studies by Colombia University and other institutions of higher education provide critical research that shows recidivism decreases with increased levels of education obtained by individuals in the criminal justice system and conversely, the lack of education by these individuals increases in the level of recidivism which translates into increased rates of crime and cost. Indeed, Congress itself has found that 90 percent (70 percent among youth) of the incarcerated individuals are without basic skills and that obtaining a GED while incarcerated would reduce their chances of becoming a recidivist.

A recent survey of Americans said that crime is a number one problem facing this country. Studies show that the industrialized world in prison population increased about 10 percent in 1995, but the U.S. prison population increased twice as much.

The goals and objectives of ATTI's comprehensive interactive distance learning project will help address some of these problems and provide individuals with much needed education and training programs. ATTI's network will reduce the normal cost associated with educating the company's targeted individuals by more than half and at the same time provide 2 to 3 months of full scale comprehensive training. This approach will substantially reduce the cost to taxpayers, save lives and eventually cut into violence and crime in the targeted areas by assisting the criminal jus-

tice system in equipping targeted individuals, where appropriate, with marketable skills prior to and after release. Research shows with a GED and other skills, these individuals will become more productive and make positive contributions to their communities and society as a whole.

Each of ATTI's training sites (except in youth detention centers) will be equipped with state-of-the-art computers linked to the Internet and the information highway. Trainers and course content will be provided through a combination of on-site, distance learning and computer based applications from colleges, universities, and where possible, from local school districts. Candidates that complete training will receive a certificate from a university, college or training organization. Training will include ABE, GED, employability and job-hunting skills, motivational programs, and various technical-training skills mentioned before. Key to the success of this project, is government's involvement as a collaborative partner. The results of this project will lay the groundwork to help attract new businesses to cities due to the increased number of trained individuals, an increased skilled workforce, and the reduction of crime.

ATTI needs funding to accomplish the following:

- Train and educate our targeted population, in the nine above states, as a five-year demonstration project.
- Reduce the cost to both federal and state governments (taxpayers) by up to \$330 million per 2,000 individuals, in crime and violence related expenses.
- Increase the amount of targeted individuals' enrollment in training and educational programs by over 100 percent and at 100 percent less cost.
- Furnish a "Gateway" for academic institutions and hospitals to assist ATTI's effort and provide access to ATTI's courses, training and skills enhancement programs on demand.
- Provide a full days menu of numerous educational and skills enhancement programs.
- Offer health related programs.
- Provide basic skills and other preparatory programs.

We request that the Senate Appropriations Subcommittee on Commerce, Justice, State, The Judiciary and Related Agencies designate funding in the amount of \$16 million to implement this important national demonstration project. We also request that this appropriation be established on a multi-year basis to extend over a period of five years so that continued research and evaluation can be provided to the Congress and shared with other crime prevention organizations and agencies.

In closing, I would like to thank the Chairman and the Committee for considering this important funding requests.

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PREPARED STATEMENT OF JUDY CLARKE, PRESIDENT, NATIONAL ASSOCIATION OF  
CRIMINAL DEFENSE LAWYERS

Mr. Chairman and Members of the Subcommittee: The National Association of Criminal Defense Lawyers (NACDL),<sup>1</sup> appreciates this opportunity to offer our views concerning the Defender Services Appropriation for fiscal year 1998. This account has been badly underfunded for many years. During that same period, funding for law enforcement, prosecution and prison construction has grown dramatically. And, at the same time, criminal law and procedure have become more complex; death penalty litigation has expanded and accelerated, while funding for capital representation has been eviscerated; and the costs of legal practice have escalated.

We believe it is essential to recognize the defense function as an integral part of America's criminal justice system if it is to ensure the Constitution's guarantee of fairness and due process to persons accused. To preserve and protect the integrity of that system, we strongly urge Congress to appropriate \$400,000,000 for Defender Services an amount necessary to begin the recovery from too many years of inadequate funding.

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<sup>1</sup>NACDL is the preeminent organization in the United States advancing the mission of the nation's criminal defense lawyers to ensure justice and due process for persons accused of crime. A professional bar association formed in 1958, NACDL's 9,000 direct members—and 78 state and local affiliates with another 25,000 members—include private criminal defense lawyers, public defenders and law professors committed to preserving fairness within America's criminal justice system.

## INTRODUCTION

The Defender Services Appropriation funds the Federal government's Sixth Amendment obligation to provide counsel to represent defendants unable to hire their own attorney.<sup>2</sup> In addition, the appropriation enables the government to fulfill its Fifth Amendment duty to provide such defendants with the "basic tools,"<sup>3</sup> and the "raw materials"<sup>4</sup> necessary to contest the prosecution's case within our country's adversary system of justice. These services are mandated by the United States Constitution; they are not "discretionary."

Four years ago, the Judicial Conference of the United States reported to Congress the results of its extensive review of the Criminal Justice Act (CJA):

There is no question that the single most important problem to confront the CJA program in recent years is that sufficient funding has not been appropriated to meet the increasing costs of providing the Constitutionally mandated services that the program was created to provide.<sup>5</sup>

Years of insufficient funding have resulted in federal criminal justice system with a number of shortcomings,<sup>6</sup> including: Failure to fund federal defender organizations in all districts; failure to fund cost-effective death penalty representation; unreasonably low compensation for CJA "panel" attorneys; and inadequate qualification standards for panel attorneys.

NACDL strongly agrees with those findings of the Judicial Conference Report. Without adequate and long overdue Defender Services funding, the constitutional mandates of Due Process and Effective Assistance of Counsel cannot be fulfilled.

## PUBLIC DEFENDERS

NACDL agrees with the Judicial Conference that each judicial district should have an adequately funded federal defender organization (Federal Defender or non-profit Community Defender).<sup>7</sup> Defender offices provide consistently high quality representation because they specialize in federal criminal law, receive regular training through the Administrative Office and the Federal Judicial Center, and maintain ongoing professional relationships with the court and the other agencies involved in the criminal justice system. In many districts, defenders also provide training, legal advice, and administrative support to CJA panel attorneys.

Congress should appropriate funds sufficient to open defender offices in the districts now without such offices; to enable existing offices to continue to keep up with the caseloads added by accelerating law enforcement and prosecution budgets; and to accommodate the increase in complexity driven by recent and expected substantive criminal legislation.

## POST-CONVICTION DEFENDER ORGANIZATIONS

The poor quality of much of America's death penalty representation is a well-documented national disgrace and international embarrassment.<sup>8</sup> Exacerbating that crisis, Congress, in 1996, excluded funding for the Post-Conviction Defender Organizations (PCDO's) non-profit community defender organizations which served 20 of the 38 death penalty states (50 federal judicial districts). That precipitous act (repeated for fiscal year 1997) together with the accelerated scheduling mandated by the Antiterrorism and Effective Death Penalty Act of 1996, leaves hundreds of death row inmates without counsel, greatly increases the cost of representation for the rest, and has contributed to delay in the processing of capital cases.<sup>9</sup> The Subcommittee should recommend omission of that funding prohibition for fiscal year 1998.

<sup>2</sup>*Gideon v. Wainwright*, 372 U.S. 335 (1963); *Johnson v. Zerbst*, 304 U.S. 458 (1938).

<sup>3</sup>*Britt v. North Carolina*, 404 U.S. 226, 227 (1971).

<sup>4</sup>*Ake v. Oklahomak*, 470 U.S. 68, 77 (1985).

<sup>5</sup>Report on the Federal Defender Program 11 (March 1993). The result of an extensive study of the effectiveness of the Criminal Justice Act, as required by Section 318 of the Judicial Improvements Act of 1990, the Report is reprinted at 53 CrL (BNA) 2003 (April 14, 1993).

<sup>6</sup>Report on the Federal Defender Program, at 12.

<sup>7</sup>Report on the Federal Defender Program, at 20-21.

<sup>8</sup>*See, e.g.*, ABA, Resolution of the House of Delegates, Feb. 1997 (calling for a moratorium on imposition of the death penalty because of widespread defects, notably a failure to provide qualified and compensated defense counsel, investigators and experts); Int'l Comm'n of Jurists, Administration of the Death Penalty in the United States (June 1996).

<sup>9</sup>*See, e.g.*, *Davis v. Thomas*, 266 Ga. 835, 471 S.E.2d 202 (1996) (describing the scramble to replace PCDO representation following de-funding, and ordering a continuance in the state habeas case).

Established as a cost-effective means of providing counsel, PCDO's specialized in state and federal death penalty representation the law's most complex, burdensome and emotionally taxing specialty. In addition to direct representation in some cases, PCDO's performed a number of functions which help to ensure that fair and complete capital habeas corpus petitions were promptly filed and competently processed by trained counsel. Those organizations assisted the courts by recruiting counsel willing and able to provide representation in such complicated and demanding cases, thus relieving the courts of the need to perform this difficult and often time-consuming task. In many states, PCDO assistance enabled private attorneys to provide representation pro bono without charge to the government. And where pro bono attorneys were not able to satisfy the need for counsel services, PCDO staff attorneys provided cost-effective representation in these most critical cases. Finally, where a PCDO did not have funds to hire enough staff to represent all of a state's death row population, the PCDO provided support services that greatly reduced the cost of assigning private attorneys.

In short, by providing competent, well-trained counsel, PCDO's reduced delay and, ultimately, the cost of processing capital cases in accordance with the constitutional requirements and procedures established by the Supreme Court. As the Judicial Conference Report put it:

The Death Penalty Resource Centers have provided invaluable services in an appropriate and cost effective manner. They have facilitated the appointment of competent attorneys in capital cases and have brought a higher quality of representation to these cases. They have, moreover, streamlined the capital litigation process by expediting cases and avoiding costly repetitive legal proceedings. The resource centers demonstrate how the current flexible structure of the CJA program has allowed for the development of innovative uses of limited resources that facilitate the attorneys working within the program in delivering the kind of representation required to ensure the continued vitality of the Sixth Amendment in even the most complex and demanding cases.<sup>10</sup>

Funding for PCDO's came from the Defender Services Appropriation and from non-CJA (state or private) resources sufficient to support the PCDO's work related to state court proceedings. The federal component of that funding should be restored in order to fill the growing capital caseload needs, consistent with legislative demands for more federal capital prosecutions and for faster processing of capital habeas cases.

#### CJA PANEL ATTORNEY COMPENSATION

1986 amendments to the CJA authorized the Judicial Conference to adjust the 1984 panel attorney hourly rates, up to \$75 per hour:

Any attorney appointed \* \* \* shall be compensated at a rate not exceeding \$60 per hour for time expended in court \* \* \* and \$40 per hour for time expended out of court, unless the Judicial Conference determines that a higher rate of not in excess of \$75 per hour is justified for a circuit or for particular districts within a circuit. \* \* \* The Judicial Conference shall develop guidelines for determining the maximum hourly rates for each circuit in accordance with the preceding sentence, with variations by district, where appropriate, taking into account such factors as the minimum range of the prevailing hourly rates for qualified attorneys in the district in which the representation is provided and the recommendations of the judicial councils of the circuits.

That adjustment mechanism now 11 years old replaced a similar procedure adopted by Congress in 1970 authorizing hourly rate adjustments "not to exceed the minimum hourly scale established by a bar association for similar services rendered in the district."

This goal was subsequently frustrated by the abolishment of minimum bar fee schedules following the decision of the Supreme Court in *Goldfarb v. Virginia State Bar*, 421 U.S. 773 (1975), which held that a minimum fee schedule promulgated and enforced by a bar association constitutes unlawful price-fixing in violation of the Sherman Act. The *Goldfarb* decision thus resulted in a collateral deactivation of the adjustment authority conferred

<sup>10</sup> Report on the Federal Defender Program, at 26. See also, U.S. General Accounting Office, Defender Services Program, 5 (July 1990) (finding that the PCDO's average "cost per representation" was 46 percent of the cost of panel attorney death penalty representations).

by Congress in the Circuit Councils. \* \* \* While the CJA Revision of 1984 removed the 1970 language authorizing judicial councils to set alternate hourly rates, it made no provision to replace this mechanism for affording flexibility to the CJA compensation scheme.<sup>11</sup>

The 1970 mechanism Congress revised in 1986 was intended to ensure that panel payments are “neither a bonanza for some lawyers to get more than the going rate in that town, nor an empty shell which will not be used because the rates are below the going charge in those towns. \* \* \* [A]nd it is hoped it will reflect what the private practitioner charges in those jurisdictions.” *United States v. Mills*, 713 F.2d 1249, at 1259, 1261 (7th Cir. 1983) (Swygert, J., dissenting, quoting Representative Abner Mikva).<sup>12</sup>

Despite that legislative intention to adjust the rates to avoid impoverishing panel attorneys and despite the fact that overhead costs have risen to exceed the base rates established over a decade ago except for a token \$5 raise in January, 1996, the Judicial Conference has postponed implementing higher rates in all but the first 16 districts to be approved, in 1988.<sup>13</sup>

Seventy-five dollar rates (generally less than half the market rate, but more than the average cost of overhead) have been approved but postponed for lack of funding for the remaining judicial districts:

—In 1990, the \$75 rate was approved for all the districts in the Seventh Circuit (Wisconsin, Illinois and Indiana) and extended to entire districts where previously limited to specific court locations.<sup>14</sup> Due to inadequate funding, those approved rates have not been implemented.

—In 1991, \$75 per hour was approved for the Southern District of Alabama, Arizona, Connecticut, Florida, the Northern District of Georgia, Guam, Idaho, Kentucky, Louisiana, Maryland, Massachusetts, the Western District of Michigan, Mississippi, Missouri, Nevada, the Western District of North Carolina, Ohio, Oregon, the Middle and Western Districts of Pennsylvania, South Carolina, Tennessee, Texas, the Western District of Virginia and West Virginia.<sup>15</sup> Due to inadequate funding, those approved rates have not been implemented.

—The \$75 rate was approved in 1992 for the Northern and Middle Districts of Alabama, the Eastern District of Arkansas, Colorado, Delaware, the Middle and Southern Districts of Georgia, Iowa, Kansas, Minnesota, Montana, New Hampshire, the Western District of New York, the Eastern and Middle Districts of North Carolina, North Dakota, Northern Mariana Islands, Oklahoma, the Eastern District of Pennsylvania, Puerto Rico, Utah, Vermont, Virgin Islands, the Eastern District of Washington, Wyoming, and Hawaii.<sup>16</sup> Due to inadequate funding, those approved rates have not been implemented.

—And in 1995 the \$75 rate was approved for the Western District of Arkansas, Maine, Nebraska, South Dakota, and the Eastern District of Virginia.<sup>17</sup> Due to inadequate funding, those approved rates have not been implemented.

Except for the token \$5 increase to \$45 per hour for work out-of-court (generally two-thirds of the average billing) and \$65 for work in court, the rates established after 1988 for those 77 districts have been repeatedly postponed. However, the cost of maintaining a law practice has not been postponed, but has steadily increased.

In the District of South Dakota, one of the least expensive locations, surveys conducted by the Defender Services Division show that the average overhead cost of a law office in 1994 was \$38 per hour.<sup>18</sup> In most locations, the costs are notably higher. Average law office overhead in New Hampshire, for example, was \$53 per hour back in 1992.<sup>19</sup> In Vermont, the overhead cost was \$47 per hour in 1993.<sup>20</sup>

<sup>11</sup>House Report 99-417, 99th Cong., 1st Sess., (December 5, 1985) (Statement of Congressional Budget Office, appended to Report). See Cong. Record Vol. 131 (1985); 1986 USCCAN 61654; 1985 WL 25927 (Leg.Hist.).

<sup>12</sup>See House Report 91-1546, 91st Cong., 2d Sess., (September 30, 1970); 116 Cong. Rec. 34,812, 34812 (1970); 1970 USCCAN 3982; 1970 WL 5700 (Leg.Hist.).

<sup>13</sup>In 1988, the \$75 rate was established—and implemented—in the following districts and court locations: Alaska, California (Central, Eastern (Sacramento and Fresno), Northern and Southern), District of Columbia, Detroit, Michigan, New Jersey, Las Cruces, New Mexico, New York (Eastern and Southern), and Seattle, Washington; \$70 rates were approved for Phoenix and Tucson, Arizona and for Hawaii; and \$60 rates for Oregon and Las Vegas and Reno, Nevada. Proceedings of the Judicial Conference (JCUS) 16, 46, 75, 111 (1988).

<sup>14</sup>JCUS 79, 108 (1990).

<sup>15</sup>JCUS 18, 47, 56-57, 73 (1991).

<sup>16</sup>JCUS 21-22, 39 (1992).

<sup>17</sup>JCUS — (1995).

<sup>18</sup>Records of surveys conducted by the Administrative Office of the United States Courts.

<sup>19</sup>Id.

<sup>20</sup>*State of Vermont v. Bacon*, 163 Vt. 279, 315 (1995).

A 1994 survey by the Tennessee Bar Association showed the average cost of office overhead of \$46.81 per billable hour.<sup>21</sup> In Texas, the average office overhead back in 1991 was \$64.25 per hour.<sup>22</sup> In Colorado, in 1992, \$46 per hour.<sup>23</sup> In Kentucky, in 1991, \$37 per hour.<sup>24</sup> In South Carolina, in 1991, \$50 per hour.<sup>25</sup> In Arkansas, \$47 per hour in 1992.<sup>26</sup> And in Maryland, in 1991, an average overhead cost of \$70 per hour.<sup>27</sup>

Since those surveys were conducted, overhead costs have continued to rise. But the compensations rates have not, effectively turning panel attorney service, at \$45/\$65 per hour in most states, into a direct subsidy of the government's constitutional obligation to provide assistance of counsel to the indigent accused of crime.<sup>28</sup> The Judicial Conference has long recognized this problem:

The \$40 and \$60 hourly rates paid to CJA panel attorneys are seriously deficient. In many locations, they do not even cover the basic office overhead costs of law offices. Thus, many lawyers accept assignments of cases from the federal courts at a financial sacrifice to their livelihood.<sup>29</sup>

Of course, the problem is most acute in districts without a federal defender organization, where panel attorneys are often conscripted to fulfill the government's constitutional obligations, losing their livelihood, and risking bankruptcy in the process.<sup>30</sup>

The crux of the panel attorney payment problem is this: The CJA, unlike the 1931 Davis-Bacon Act, does not require panel attorney payments reflecting, or even reasonably approximating, the prevailing private market wage. In fact, the \$75 maximum rate is substantially less than fifty percent of the value set by the private market in most locations. Continued payments at a fraction of that statutory rate and below the out-of-pocket cost of keeping an office open continually violates the basic constitutional property rights of those panel attorneys who, after all, have the same rights and responsibilities of any other small business owner.<sup>31</sup>

#### QUALIFICATION STANDARDS FOR PANEL ATTORNEYS

As the costs of living generally and practicing law in particular have risen, and as federal criminal law has become more complex, time-consuming and specialized, the pool of qualified CJA panel attorneys has decreased because the rates in most areas have been virtually frozen for over a decade. Some of the resulting problems are explained by the Judicial Conference Report:

Federal criminal law, including its sentencing aspects, has become exceedingly complex. It is no longer feasible for a state criminal defense lawyer to appear occasionally in a federal court and be expected to perform competently. Lack of knowledge of federal law and procedure can create very serious adverse consequences for criminal defendants.

In order to be an effective advocate in a federal criminal case today, it is essential that an attorney be knowledgeable in the federal sentencing guidelines. Unfortunately, however, information elicited by the Review Committee indicates that it is not uncommon for attorneys with little or no criminal experience to be appointed in federal cases, and a lack of training

<sup>21</sup>*State of Tennessee v. Mathews*, Criminal Court of Montgomery County, No. 33791, (March 18, 1995), at 1 (order setting a court-appointed hourly rate, in a capital case, at \$100 per hour).

<sup>22</sup>Records of surveys conducted by the Administrative Office of the United States Courts.

<sup>23</sup>*Id.*

<sup>24</sup>*Id.*

<sup>25</sup>*Id.*

<sup>26</sup>*Id.*

<sup>27</sup>*Id.*

<sup>28</sup>The Judicial Conference's CJA Guidelines, ¶ 2.28 A., excludes office overhead from those expenses reimbursed to panel attorneys: "The statutory fee is intended to include compensation for these general office expenses." Compare, e.g., *State of Louisiana v. Green*, 631 So.2d 11, 13 (La. App. 1993) (setting an overhead expense rate of \$30 per hour in addition to fees of \$45 per hour).

<sup>29</sup>Report on the Federal Defender Program, at 30.

<sup>30</sup>*See*, e.g., *Bey v. United States*, No. 93-8442, cert. denied, 114 S.Ct. 2714 (1994) (question presented: does conscription of panel attorneys to serve at a financial sacrifice violate the Constitution?).

<sup>31</sup>In *FTC v. Superior Court Trial Lawyers Assn.*, 493 U.S. 411 (1990), for example, the Supreme Court held (unanimously) that panel attorneys are small businesses covered by the Anti-Trust laws.

for panel attorneys was a common complaint cited in hearings before and correspondence to the review committee.<sup>32</sup>

Given the well-recognized, increasingly serious difficulty in recruiting qualified panel attorneys, the Judicial Conference proposed “only minimal qualification standards.”<sup>33</sup> Even though quality control is essential, because most districts are stuck at barely above the \$40/\$60 rates established in 1984, the Conference was forced to recognize that “specific requirements might render it difficult or impossible to find a sufficient number of attorneys to serve on the panel.”<sup>34</sup>

However, the 1995 Long Range Plan for the Federal Courts recommends against further delay in qualification standards: “The CJA does not establish qualification standards for attorneys serving on CJA panels. The practice of federal criminal law has become highly specialized. Defendants face increasingly lengthy prison terms. It is time for panel attorneys to be held to certain minimum qualifications.”<sup>35</sup> But with compensation at or below the cost of merely maintaining a law office, the continuing education necessary to meet minimum standards is an expense many lawyers cannot afford.

The clear solution is simply the market system: panel attorneys paid at a fair rate (even though substantially less than the market rate) can purchase from the private market the training necessary to competently fulfill the government’s constitutional mandates. The Judicial Conference should set high standards; Congress should appropriate funding sufficient to enable panel attorneys to purchase the training necessary to obtain (and maintain) the skills necessary to do the job. The whole criminal justice system will work efficiently then, to the benefit, including tax savings, of us all and it will be a justice system worthy of its name.

#### CONCLUSION THE FUTURE OF THE CJA

The Criminal Justice Act requires a “substantial proportion” of appointments to the private bar.<sup>36</sup> “Substantial” shall usually be defined as approximately 25 percent of the appointments under the CJA annually throughout the district.”<sup>37</sup> The American Bar Association also recommends “substantial participation by the private bar,”<sup>38</sup> in order to provide a broad-based constituency for improvement of the criminal justice system:

All lawyers, whether criminal practitioners or not, share in the responsibility of ensuring that the most visible legal institution in the Nation, the criminal justice system, is of the highest attainable quality. Increasingly, however, indigent defense in many cities is almost the exclusive responsibility of public defenders and a very small private bar. The remainder of the trial bar is not fulfilling its obligation to participate through the representation of indigent defendants, and as a result, the shunning of criminal defense practice deprives the criminal justice system of a powerful voice for criminal justice reform, because the influential lawyers are unfamiliar with the working of the criminal justice system.<sup>39</sup>

The private bar’s participation in the federal criminal justice system is also necessary to counter the inherent trend, in any closed bureaucracy,<sup>40</sup> of ignoring or rejecting alternative, even critical, points of view; in other words, to provide for a healthy and efficient system of checks and balances.<sup>41</sup>

The combination contemplated by the CJA—approximately 25 percent private panel attorneys; 75 percent public defenders—is readily attainable. Defender offices

<sup>32</sup> Report on the Federal Defender Program, at 28. The Report of the Committee to Review the Criminal Justice Act is reprinted at 52 CrL (BNA) 2265 (March 10, 1993).

<sup>33</sup> Report on the Federal Defender Program, at 28.

<sup>34</sup> Report on the Federal Defender Program, at 27.

<sup>35</sup> Long Range Plan for the Federal Courts, 120 (1995).

<sup>36</sup> 18 U.S.C. § 3006A(a)(3).

<sup>37</sup> Administrative Office of the United States Courts, “Model Criminal Justice Act Plan,” § VI.C (1991).

<sup>38</sup> ABA Standards for Criminal Justice, Providing Defense Services (ABA Standard) 5–1.2 (3d ed. 1992).

<sup>39</sup> ABA Standard 5–2.2 (Commentary).

<sup>40</sup> The Judicial branch, in its administrative role, is exempt from most laws covering open meetings, public records, or freedom of information.

<sup>41</sup> The institutional benefit of private bar participation is illustrated by *In re Snyder*, 472 U.S. 634 (1985), where the unanimous Supreme Court held that a private CJA panel attorney was not contemptuous for criticizing the administration of the CJA. “Officers of the court may appropriately express criticism on such matters.” Government employees, however, may not be so protected. See *Waters v. Churchill*, 114 S.Ct. 1878 (1994) (public employees can be summarily fired for criticism that could disrupt efficiency).

can and should be opened in all federal districts, and should receive the lion's share of the appointments. The remaining cases should be assigned to panel attorneys who are willing (not conscripted), who are qualified (meeting high competency standards) and who are reasonably compensated (in order to maintain qualifications, pay necessary office overhead, and avoid destitution).

But still, the only way to obtain these goals—and to fulfill the government's constitutional mandate—is to fully fund the Criminal Justice Act. Because past appropriations have been grossly underfunded, and because the pending appropriation proposed by the Administration is demonstrably inadequate to redress the dire need, NACDL urges this Committee to recommend—and the Congress to enact—an adequate Defender Services Appropriation of \$400,000,000. This appropriation cannot be viewed in a vacuum. The Constitution of the United States mandates a fair and efficient criminal justice system for all Americans. Full and fair funding to accomplish that is a pittance to pay. On the other hand, the consequences of not doing so are dire.

On behalf of the National Association of Criminal Defense Lawyers, I want to thank the subcommittee again for affording us this opportunity to be heard on this very important subject, and for considering our concerns and requests for congressional action.

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PREPARED STATEMENT OF ELDON HOUT, CHAIRMAN, COASTAL STATES ORGANIZATION, INC.

#### INTRODUCTION

My name is Eldon Hout, and I am the Coastal Program Manager for the State of Oregon and the current Chairman of the Coastal States Organization (CSO). Since 1970, CSO has served as the Governors' representative for ocean, coastal and Great Lakes issues. Delegates to CSO are appointed by the Governors from each of the 35 States, Commonwealths and Territories bordering the Atlantic and Pacific Oceans, the Gulf of Mexico or the Great Lakes.

On behalf of CSO, I want to thank you for the opportunity to submit testimony on fiscal year 1998 appropriations. This testimony focuses primarily on the ocean, coastal and Great Lakes programs administered by the National Oceanic and Atmospheric Administration (NOAA) under the Coastal Zone Management Act (CZMA).

#### COASTAL AND GREAT LAKES PROGRAMS

At the outset I want to stress two points. First, although the programs outlined below are generally described as "coastal and ocean programs," they include the Great Lakes, islands and territories and they provide substantial benefits to the entire nation. Second, these programs administered largely under the authorities of the CZMA, represent a model partnership between State, Federal and private interests allowing the States to set locally based priorities and leveraging public and private resources in order to achieve a responsible use of land and water resources.

The economic and social value to the nation of prudent coastal resource management cannot be overstated.

- Thirty-two percent, or \$1.3 trillion, of the Gross National Product is generated from activities in coastal areas.
- Fifty percent of the U.S. population currently lives on 11 percent of the land that is designated as coastal; and that is expected to increase to 60 percent by 2010.
- 40 percent of new commercial development and 46 percent of residential development is in coastal areas.
- Travel and tourism is the nation's largest industry and 85 percent of that is focused on the coast.
- The coast supports 70 percent of the commercial and recreational fishing harvests.

Acre for acre, America's coastal zone is one of the Nation's most valuable resources.

Coastal waters are linked ecologically and economically directly to the nation's heartland by the network of navigable waterways. These waterways provide substantial recreational and economic benefits to the nation. Coastal ports handle over 95 percent of the volume of imports moving in international trade. Only with effective coastal resources management programs will we be able to accommodate these ever expanding and essential uses of our waterways.

The CZMA was reauthorized last year with broad bipartisan support, and this year is celebrating its 25th anniversary. Thirty-four of 35 eligible States and Territories are voluntarily participating in this program. The most important feature of the CZMA is that it is State driven, placing management decisions at the State and local level. In addition, the CZM program puts the States on an level playing field with the federal government in the area of coastal resource management. Once State coastal management programs are federally approved, federal agency activities affecting the resources of the coastal zone must be consistent with the State's program.

It is more important than ever that funding levels for these programs be sustained in order to ensure that we are prepared to meet the growing challenges and can continue to reap the substantial benefits that result from coastal management activities. We recognize that this Committee faces very difficult budget choices again this year. Therefore, we are requesting only a modest increase from last year's funding levels so that the States, in partnership with the Federal government, can sustain an essential level of services through NOAA's core coastal programs.

#### REQUESTED FISCAL YEAR 1998 FUNDING LEVELS FOR NATIONAL CZM PROGRAMS

*State Coastal Program Grants (Section 306).*—Funding for the national CZM program over the past few years has been essentially level. While relatively speaking in the current budget environment this is good news, funding for State coastal programs in real terms has declined due to inflation and the increasing number of States participating in the program. In addition, "level funding" in the face of the increased program needs and more competing demands on coastal resources is an effective decrease in support for State programs.

With the addition of Ohio and Texas to the CZM program, the other 29 States and territories with approved programs are faced this fiscal year with projected funding decreases of 4.8 percent—6.8 percent as compared with fiscal year 1996 levels. Similarly, Georgia and Minnesota are scheduled to come into the program this year and, although the Administration's proposed budget recommends an additional \$1.5 million in spending, it will only partially cover actual costs thereby resulting in still further reductions in State funding allocations in fiscal year 1998.

The Coastal States Organization recommends that no less than \$49 million be provided in fiscal year 1998 to fund CZMA §306 grants for State coastal zone management programs. This request would provide adequate funding to incorporate the four new States into the CZM program without significantly reducing existing commitments to the other States. The \$49 million request is also consistent with the authorization level provided by Congress last year in reauthorizing the CZMA. This request reflects a \$2.8 million increase above the \$46.2 million provided in the fiscal year 1997 appropriation. In light of the growing demands on these coastal resource programs and the substantial economic return, this is a very modest request.

*Clean Water Initiative (Sections 306/310).*—The Administration's budget proposes an additional \$18 million in new funding for a Clean Water Initiative: Protecting Health in Coastal Communities. The funds would be expended on priorities identified by States and local communities to eliminate specific sources of pollution and clean up degraded sites. Six million dollars would be distributed to States under Section 306 to specifically address coastal water quality problems that directly affect human health such as shellfish contamination and beach closures. Twelve million dollars would be provided in grants under Section 310 to clean up priority sites degraded by pollution.

This Initiative would greatly assist coastal communities in protecting public health where chronic pollution sources result in shellfish contamination and beach closures. This \$18 million would fill an important gap in existing programs thereby enabling states to target a discreet category of chronic pollution problems and protect public health particularly in smaller communities which do not have the resources to address these problems.

CSO is encouraged by the recognition that there is a need for increased funding for the implementation of the 306 and 310 programs, based on State priorities. There is a backlog of worthy projects in the States that will not receive funds under the base funding level for 306 programs. CSO supports this additional funding which will provide the tangible benefits directly to communities across the country.

*Coastal Nonpoint Source Pollution.*—NOAA and EPA have begun issuing findings for the approval of State coastal nonpoint source control programs developed under CZARA §6217. All States are expected to receive conditional approval of their programs. NOAA, EPA and the States have agreed upon a process for resolving the obstacles to full program approval. CSO is optimistic that EPA and NOAA are committed to working with the States to address our concerns related to implementation

of this program. CSO supports the President's request of \$1 million for funding CZARA §6217 program development activities.

*The National Estuarine Research Reserve System (Section 315).*—Section 315 of the CZMA established the National Estuarine Research Reserve System (NERRS) to serve the national interest by providing a network of sites for research, education, and long-term monitoring. NERRS researchers are helping to control the invasion of exotic species; working with the agricultural community and forest industry to minimize the impacts on coastal resources; and, developing sustainable management strategies for shellfish beds and commercial fishery habitat.

Currently there are 22 sites comprising over 500,000 acres of varied estuarine environments. Six more sites are in the pipeline for federal designation. Yet, funding levels have been static over the past several years. Indeed, Congress directly appropriated only \$1 million in fiscal year 1997 with the balance of funding being provided by NOAA under its Coastal Zone Management Fund (see discussion below). The NERRS managers have identified \$7 million in basic funding which is necessary to maintain existing operations at the Reserves. CSO supports funding at the maximum level Congress can provide.

Further, we request that the funding be provided through the Section 315 line item, in contrast to funding this program out of the CZM Fund. In fiscal year 1997, the lion's share of funding for the NERRS program (\$3.3 million) came out of the CZM Fund. The President's fiscal year 1998 budget request also recommends funding the NERRS system through its line item authorization. It is important to restore full line funding for this program because revenue in the CZM Fund are projected to decrease in the coming years and will not be available to offset any funding shortfalls.

CSO also requests that the Subcommittee provide \$6 million from the NOAA Construction Account for the NERRS system, an increase of \$1 million over levels provided in fiscal year 1994 and 1995. Bearing in mind that we are not requesting any increase in the President's request for the NOAA construction account, we are requesting that Congress make available \$6 million of these funds for land acquisition and facility construction of the NERRS system.

*The Coastal Zone Management Fund: CZMA Section 308.*—The Coastal Zone Management Fund is designed to provide funding for projects that address a broad array of coastal resource management issues. The Coastal States Organization requests that \$7.8 million be appropriated to the CZM Fund for fiscal year 1998. This fund is financed through loan repayments of the retired Coastal Energy Impact Fund, and NOAA has projected that \$7.8 million in loan repayments will be received in fiscal year 1997. Thus, we support the President's request of \$7.8 million to be appropriated to the CZM Fund. The funds in the CZM Fund should be available solely for §308 purposes not to offset other budget line programs.

*National Marine Sanctuary Program.*—There are 14 designated National Marine Sanctuary sites in the United States. Two major sites—the Florida Keys and Hawaii—will become fully operational in late 1997 and early 1998. The program has substantial new responsibilities, as evidenced by the greatly expanded size of the system. Marine Sanctuaries cover 19,000 square nautical miles. These are invaluable resources that are being preserved for future generations. Congress provided \$11.7 million in funding in fiscal year 1997 for the National Marine Sanctuary Program, essentially level funding compared to fiscal year 1996. We recognize the tight budgetary constraints this year, but also realize that level funding for a greatly expanding National Marine Sanctuary will actually result in significant cuts for several individual Marine Sanctuaries. Recognizing the importance of the National Marine Sanctuary program to coastal resources and State economies, CSO supports \$15 million in appropriations for fiscal year 1998.

*NOAA Coastal Services Center and Coastal Ocean Program.*—Both of these programs have provided state coastal programs with services which have made for tangible improvements to state coastal management programs. Both deserve at least level funding which is \$12 million and \$15.2 million respectively.

*National Sea Grant College Program.*—The National Sea Grant College Program was established by Congress in 1966, with the mission of employing a broad range of physical and social marine sciences to address the multitude of problems affecting America's coastal, ocean and Great Lakes waters. For thirty years this program has served the needs of coastal, ocean and Great Lakes resource managers in the fields of fisheries, aquatic nuisance control, aquaculture, coastal zone management, marine biotechnology and seafood safety, to name a few. CSO recommends providing continued funding for this important, long-standing and successful program.

## CONCLUSION

The Coastal States Organization supports funding in the following amounts—\$49 million for State coastal zone management program (§306) grants; \$18 million for coastal clean up initiatives (\$6 million through §306, and \$12 million through §310); \$7 million as requested for grants for management and research (§315) of the 22 National Estuarine Research Reserve sites, and \$6 million for the NERRS system from the NOAA construction account; \$7.8 million in appropriations from CZMA Coastal Zone Management Fund (§308); and \$15 million for the National Marine Sanctuary Program;

These programs are justified by the national interest, financial need and program merit. The Coastal States Organization recognizes the tight fiscal constraints upon the Subcommittee in fiscal year 1998. It is for this reason that priority must be given to existing, proven, operating programs that truly do stimulate economic growth and development. We respectfully urge this Subcommittee to establish the CZMA as its priority environmental/economic development program, and fund the CZMA programs at the levels requested herein.

We greatly appreciate the opportunity to submit our recommendations to this Subcommittee. The Coastal States Organization stands ready to assist you in any way we can. Thank you for your consideration.

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PREPARED STATEMENT OF CHARLES G. SCALET, PRESIDENT, NATIONAL ASSOCIATION  
OF UNIVERSITY FISHERIES AND WILDLIFE PROGRAMS

The National Association of University Fisheries and Wildlife Programs (NAUFWP) submits this statement in support of more adequate appropriations in fiscal year 1998 for important practical research and outreach to citizens through the National Sea Grant Program carried in proposals for the National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

Members of the NAUFWP include 55 Universities. We seek to enhance public understanding of the needs for improving natural resource management and to advance the science and practice of sustainable uses and management of the resource base. Our efforts focus on cooperative work with partners and customers to advance research, education, outreach and management to benefit people and communities throughout the country.

Results from the Roper Starch fifth annual survey of adult Americans, prepared for the National Environmental Education and Training Foundation and released in December 1996, illustrates pressing needs for Sea Grant's research and outreach programs. Key findings of adult views on natural resources provide an overall context in which to consider the specific figures in the President's proposed fiscal year 1998 budget. Adult Americans believe: Environmental resources should be conserved in ways that balance economic growth while protecting the environment and human health; natural resources can be managed in ways that protect wildlife and ecosystems while people benefit from their planned uses; Federal government spending should be shifted to environmental programs from other areas; and concerns for the environment and management of natural resources can be responded to by expanding education programs designed to raise current low levels of knowledge about the environment, such as to maintain and improve water quality.

Within this context of public views and needs for research, education, outreach and management, the NAUFWP supports continuing and strengthening the Sea Grant Program. Stronger programs are required to be more responsive to needs of the public and resource managers.

The National Sea Grant Program has been acclaimed a model for organizing research and providing practical, useful information for specific geographic areas. Universities with Sea Grant Programs bring together federal, state, business and other private interests to provide extraordinary returns on a small federal investment. Results from studies show that each federal dollar is leveraged tenfold or more in private sector development, often in small businesses.

Importance of the National Sea Grant Program in maintaining and enhancing the nation's marine, coastal and Great Lakes' resources is paramount to continuing a strong economy and quality of life enhanced by the values, products and services flowing from these aquatic areas. With more than half of the U.S. human population living in coastal counties, and expanding at a faster rate than the nation as a whole, there is great need for information and guidelines to plan human activities carefully.

To respond to pressing needs for research, information, and advisory services in various geographic areas the NAUFWP provides two recommendations:

—Ensure that the U.S. continues to invest in its future through the soundly-based Sea Grant program:

Information from Sea Grant research, education and advisory services is important to a broad spectrum of people in using coastal resources responsibly and sustainably, without enlarging costly restoration efforts. With more than three decades (1966–1997) of valuable experiences in meeting real-world situations and resolving pressing problems, Sea Grant is unique in generating and translating science into information used by businesses, agencies at all levels and the general public.

—Provide \$56 million for the Sea Grant Program in fiscal year 1998 rather than \$50,182,000 carried in the President's proposed budget.

This larger amount is consistent with the overall thrust of the Sea Grant reauthorization (H.R. 437) being processed now. The President's proposed reduction of \$4.1 million from fiscal year 1997 would terminate the National Coastal Resources and Development Institute, as well as essential research on oyster diseases and the zebra mussel. These important activities should be continued, not eliminated.

Please include this statement in the official record on the fiscal year 1998 appropriations.

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PREPARED STATEMENT OF CYRUS M. JOLLIVETTE, VICE PRESIDENT FOR GOVERNMENT RELATIONS, UNIVERSITY OF MIAMI

Mr. Chairman and Members of the Subcommittee: I am pleased to submit testimony on behalf of the University of Miami and Florida State University. Both of the institutions have long enjoyed your support, and my colleagues in Florida are deeply appreciative of your leadership, Mr. Chairman, and the Subcommittee's confidence. At no time in the past have you and your colleagues on the Committee on Appropriations faced more difficult constraints. Yet, I am certain that you will continue to make the difficult choices with the best interests of the nation guiding your decisions. My colleagues and I hope that you will find it possible to fund the important initiatives detailed below in the fiscal year 1998 appropriations cycle.

On behalf of the University of Miami and Florida State University jointly I commend you, Mr. Chairman, for your affirmative response to the Florida Delegation's fiscal year 1997 request concerning The Florida Consortium for Climatic Research, a project involving the University of Miami, Florida State University, the University of Florida, and the University of South Florida.

The importance of El Niño Southern Oscillation (ENSO) events as a major source of climate fluctuations, together with advances in ENSO predictability, suggest that forecasts have significant potential for benefiting agricultural productivity and economic decision-making. However, until last year, no significant attempts had been made to develop a system which would take advantage of climate forecasts. For fiscal year 1998, we seek \$2 million for the Florida Regional Application Centers, one for the southeastern U.S. and one for a multi-national area.

The geographic focus of this project will include the southeastern U.S.; southeastern South America including portions of Brazil, the entire territory of Uruguay, and the province of Buenos Aires in Argentina; northern Mexico; and Costa Rica. Each of these regions are large food producers whose productivity is significantly impacted by weather conditions generated by the ENSO phenomenon. Decisions made by well-informed participants from farm to policy level, made several months or seasons in advance, can significantly benefit productivity.

This project presents an end-to-end approach that will provide the bridge between climate forecast producers, such as the recently formed International Research Institute for Climate Prediction (IRICP), and agricultural decision makers. Specific objectives for the project are to: (1) adapt, develop, and evaluate a generic, flexible set of tools and methodologies for assessing regional agricultural consequences of El Niño events and for applying forecasts to improve agricultural decision-making; (2) demonstrate the successful applications of forecasts to agriculture and other sectors which would benefit best in the southeastern United States and South America that began in 1996; (3) assess the value of climate predictions to different agricultural sectors in these southeastern regions; and (4) extend methods and tools to northern Mexico and Costa Rica, working with cooperating agencies in demonstrating the effectiveness of the proto-regional application center concept.

Again, for the University of Miami and Florida State University and approximately 80 other entities we seek your continuing support for a major environmental initiative within your purview, the South Florida Coastal Ecosystems and Florida Bay Multi-Agency Plan.

Florida Bay is a triangularly shaped body of water about 600 square miles in area. Over 80 percent of the Bay lies within Everglades National Park. The Bay is bounded by the Florida Everglades on the north and the Florida Keys on the southeast. In the Bay over 200 small islands or "keys" occur, many of which are rimmed with mangroves and have interior, irregularly flooded, "flats" with calcareous algal mats. The Bay is shallow, often hyper-saline, and, until recently, was characterized by clear waters, and lush sea grass meadows covering a mosaic of shallow water banks and numerous relatively deeper water basins or "lakes". Deep narrow channels connect neighboring basins. Hard bottom habitats in southwestern Florida Bay support sponge and hard and soft coral communities.

Florida Bay is known as the principal inshore nursery for the offshore Tortugas pink shrimp fishery, for providing critical habitat for juvenile spiny lobster, stone crab, and many important finfish species. While the Bay is the site of an extensive sport fishery, it is also important as a nursery area for many recreationally important finfish in the Florida Keys National Marine Sanctuary. Moreover, the Bay supports numerous protected species including the bottle nosed dolphin, several species of sea turtles, manatees, and the American crocodile.

There are many indications that the environmental health of Florida Bay has deteriorated. Fishing success has declined for many of the species that depend upon the Bay as a juvenile nursery habitat. Atypical algal blooms, attributed to sponge and manatee dieoffs, are occurring in the Bay and Florida Keys. Mangroves appear to be in decline. While the causes of the various problems and the relationships between them are not well understood, there is no question that, like the sawgrass habitat of the Everglades, the coastal marine ecosystem of Florida Bay is in jeopardy.

The objective of the South Florida Coastal Ecosystem and Florida Bay Multi-Agency Plan is to provide decision-makers who are working to restore and maintain a healthy South Florida coastal ecosystem with reliable scientific information. At present there is insufficient knowledge to predict with confidence the consequences of alterations in freshwater input to Florida Bay.

Since no one can turn back the clock and South Florida's rapid development will almost certainly continue, a series of compromises and tradeoffs will have to be made in restoring and maintaining a healthy South Florida coastal ecosystem including Florida Bay. It is essential that decisions be made based on reliable scientific information. That is the objective of the South Florida Coastal Ecosystem and Florida Bay Multi-Agency Plan which is collaboratively managed and conducted by the National Oceanographic and Atmospheric Administration's Atlantic Oceanographic and Meteorological Laboratory, the National Marine Fisheries Service Miami Laboratory, and the Rosenstiel School of Marine and Atmospheric Science.

We urge you, Mr. Chairman, to provide \$6 million in dedicated National Oceanographic and Atmospheric Administration funding for this project, a multi-agency activity in which more than 80 Florida entities are at work seeking solutions to very critical Florida Environmental issues.

The Rosenstiel School of Marine and Atmospheric Science at the University of Miami is one of the premier academic, oceanographic research facilities in the world. Located on a 16-acre facility on Miami's Virginia Key in Biscayne Bay, the Rosenstiel School offers the only subtropical marine research base in the continental United States. With the Gulf Stream off shore, a vast expanse of living coral reefs just to the south, and the Florida-Bahamas Carbonate Platform to the east, the campus is surrounded by a unique marine laboratory.

My colleagues at the Rosenstiel School, 90 well-published and broadly talented Ph.D. scientists are who work in close collaboration with other scientists—in Florida and across our region—are uniquely qualified to conduct valuable research in their fields. On their behalf I bring the following five projects to the attention of and respectfully request the endorsement of the Subcommittee for these projects through the National Oceanographic and Atmospheric Administration.

SOUTH FLORIDA OCEAN MEASUREMENTS LABORATORY, UNIVERSITY OF MIAMI (UM)/  
FLORIDA ATLANTIC UNIVERSITY (FAU), SOUTH FLORIDA TEST FACILITY (SFTF)

A partnership is currently being defined between UM, FAU, and SFTF for the purpose of developing a unique Ocean Measurements Laboratory to expedite ocean research and testing by direct access to the sea with high speed fiber optic cables that are connected to the Port Everglades (Fort Lauderdale), Florida facility operated by the SFTF and the new FAU facility in Dania, Florida.

The partnership would afford the participants equal input for state and federal infrastructure proposals, and on the working level, individual investigators from each organization would compete within the peer review process for specific research

projects. Natural spheres of interest among the participants are: FAU has program in autonomous underwater vehicles and the applications of high frequency underwater acoustics to problems in sub-bottom profiling, underwater communication, and mine warfare; SFTF is involved with the at sea tests and trial for U.S. Navy ships, submarines, sonars, and other systems; and UM has nearly a 40-year history of research in the Florida Straits on low frequency long range acoustic propagation in shallow water, bio-acoustics, and the development of underwater signal processing methods. UM can successfully contribute to the design of the general purpose instrumentation suite for defining the oceanic and atmospheric environments at the FAU and SFTF sites.

#### UNIVERSITY OF MIAMI OCEAN SURFACE CURRENT RADAR (OSCR)

The University of Miami's OSCR system is a shore-based, dual-frequency Doppler radar which transmits short pulses of electromagnetic radiation in the radio frequency band. The signal is scattered back from the moving ocean surface and received by a linear phased-array antenna system erected along the shore. The radar measures the Doppler shift of resonant surface waves by the underlying flow. The measuring principle is identical to that used by police to clock speeding cars. The result is a map of surface vector currents over a large domain ( $30 \text{ km} \times 45 \text{ km}$ ) at high spatial (1 km) and temporal (20 min) resolution. With increasing interest in the coastal ocean there is also a requirement to acquire high-quality surface current data for long-term monitoring of the surface circulation to study their effect on a broad spectrum of societal and environmental issues such as coastal pollution, oil spills, beach erosion and sediment transport. A wide variety of management decisions would be enhanced with the "real-time" knowledge of the circulation patterns in a body of water.

The OSCR system operated by the University of Miami has been rigorously tested and used in numerous applications over the past several years, such as experiments to study the transport of reef fish larvae, the detection of eddies and fronts, the evolution of fresh water plumes in the coastal ocean and validation of airborne and satellite-based remote sensors. Recently, we have expanded the measurement capability of OSCR to extract sea state information. Other studies are also underway to specify the wind speed and direction from OSCR measurements.

#### SOUTHEAST CONSORTIUM FOR OCEANOGRAPHIC RESEARCH (SECOR) OPERATION OF FISHERIES OCEANOGRAPHIC VESSEL

The three universities comprising SECOR are the University of Miami, Texas A&M University, and the University of Texas. Additionally, the NOAA Atlantic Oceanographic and Meteorological Laboratory has joined SECOR as an associate member. The three universities seek funding for and propose to operate a new regionally-based fisheries-oceanography ship in cooperation with the National Marine Fisheries Service (NMFS) of NOAA. Research trends over the past few years, as well as national needs, make the Gulf coast and the Caribbean an area of great opportunity and international coordination. Such a vessel could fill the need for a sub-intermediate class ship, capable of working on fishery-oceanographic projects on the continental shelf, as well as conducting NMFS fishery stock assessment surveys.

SECOR has already implemented joint operations. The combined strengths of the universities and NOAA laboratories can create an efficient use of existing facilities and can lead to enhanced regional multidisciplinary research programs. SECOR anticipates that there would be scientific and cost-saving benefits in coordinating the operation of a regionally-based ship.

#### THE RECENT DISCOVERY OF A SAND CHANNEL AND ITS IMPLICATIONS FOR THE SUPPLY OF PHOSPHATE TO FLORIDA BAY

Scientists at the University of Miami Rosenstiel School have discovered a possible connection between the occurrence of algal blooms in Florida Bay and the underlying rocks. Based upon a series of core borings taken throughout South Florida, it appears that a confined bed composed of coarse quartz sand runs from areas close to Lake Okeechobee south underneath the Everglades and close to the surface in Florida Bay and the Keys. Rosenstiel School scientists have suggested that phosphate rich waters could be transporting this sand into Florida Bay, providing this essential nutrient to algal and plant life in the area. Excess supply of phosphate result in algal blooms which are detrimental to water clarity and life in the Bay.

It is important that this discovery be investigated as soon as possible. Funds are being expended in attempts to find solutions for excess phosphates, such as restrictions on agricultural sources. Results from this study could have significant impact

on decisions now being discussed by various agencies for remedying the perceived decline in Florida Bay.

INTRA-AMERICAN SEA REGIONAL CONTROL GLOBAL OCEAN OBSERVING SYSTEM (IFS-GOOS)—THE LINKAGE OF FISHERIES OCEANOGRAPHY AND OCEAN POLLUTION RESEARCH AND MANAGEMENT

The worldwide oceanographic community is working to develop the Global Ocean Observing System (GOOS) as a vehicle for providing regular observations to document climate variability and global change in support of the Rio Treaty; and to support marine operations, such as safe navigation, fisheries management, ocean pollution control, and search and rescue. GOOS already has begun to implement these activities in Europe and Asia. Now is the time for the U.S. to move ahead in cooperation with Mexico and other Latin American and Caribbean nations, with the initiation of a regional GOOS named IFS-GOOS.

Modern marine operations have a common need for a regular program of remote oceanographic and atmospheric observations. These observations must be synthesized with computer models to provide predictions and products that can be applied to fisheries management and ocean pollution control. The Rosenstiel School's proposed plan includes a five-year research and demonstration phase, and includes partnering activities with regional NOAA laboratories.

DEVELOPING A FISHERY-INDEPENDENT INDEX OF GIANT BLUEFIN TUNA ABUNDANCE

Bluefin tuna are the prized target of important fisheries in the Atlantic Ocean. Assessment of the two distinct tuna stocks indicates that there was a dramatic decline in its abundance in the western Atlantic during the 1970's and 1980's. However, recent trends are not estimated precisely enough to determine if the population decline has been halted. Of particular concern to managers and fishermen is the population size of mature bluefin tuna (ages 8 and older) which are needed in order to renew the resource. The estimation of this population via Virtual Population Analysis method is imprecise and logistically difficult.

We are proposing to evaluate the feasibility of an alternative fishery-independent index of relative giant bluefin abundance. These fish are thought to carry out a predictable seasonal migration that takes them into the Gulf of Mexico for spawning around May, and then out into the Florida Straits, passing the Great Bahamas Bank sometime in June. An ideal index would be one that would capture an accurate view of this spawning stock as it moves out of the Gulf every year. We are proposing to use state-of-the-art acoustic techniques that can count individual fish in the water column over a relative wide area. We are seeking \$1 million in funding from NMFS for this proposed research. The research would be conducted jointly with a Canadian acoustician at the Institute of Ocean Sciences in Sidney, British Columbia. This joint partnership is opportune because Canada recently initiated a 5-year National Hydro acoustics program to develop improved approaches to acoustic stock assessment.

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PREPARED STATEMENT OF JOHN D. BOSSLER, REAR ADMIRAL (RETIRED), DIRECTOR,  
CENTER FOR MAPPING, OHIO STATE UNIVERSITY

Mr. Chairman and members of the subcommittee: My name is John D. Bossler, Rear Admiral, NOAA (Ret.) and I am a former Director of the Coast and Geodetic Survey, which produces the nautical and aeronautical charts vital to our nation's safe, efficient marine and air transportation. Currently I am the Director of The Center for Mapping at The Ohio State University, Director of the NASA Commercial Space Center in Real-Time Satellite Mapping, and a full professor in the Department of Civil and Environmental Engineering and Geodetic Science of The Ohio State University. I have been president and chairman of numerous professional societies including the American Congress of Surveying and Mapping, National Academy of Science Advisory Committee on Mapping Science, and the University Consortium for Geographic Information Science. It is my pleasure to provide my views on the future of the Commissioned Officer Corps of the National Oceanic and Atmospheric Administration (NOAA).

NOAA CORPS

The Administration has included in its fiscal year 1998 budget a "place-maker" of \$14 million to civilianize the NOAA Commissioned Corps. If this proposal is adopted, a uniformed service that plays a key role in our Nation's charting program

will be dissolved. This would mark the first elimination of a uniformed service in our nation's history.

A full inquiry into the facts and circumstances surrounding the proposal will reflect that the Administration's intended proposal is simply not supportable. In this respect, three major areas must be carefully considered and fully examined—service history, national interests, to include potential environmental and national security issues, and cost savings.

#### SERVICE HISTORY

First, background on the history of the Commissioned Corps. The Commissioned Corps has been integral to our nation's development for the past 190 years. The Corps traces its lineage to 1807 when President Thomas Jefferson signed a bill for the "Survey of the Coast." Today's Commissioned Corps is the direct descendant of the commissioned service of the United States Coast and Geodetic Survey (C&GS). It has served the American people on many occasions over the decades, providing valuable scientific and engineering skills to the armed services and the nation.

The Commissioned Corps is unique in that it provides an organization of uniformed professionals to conduct NOAA's operational activities such as managing ships, aircraft, and field assignments with great flexibility and rapid response. The NOAA Corps is the only uniformed service that requires every officer to have a college degree in science or engineering prior to being commissioned. The Commissioned Corps selects its personnel from the strength of the country's premier colleges and universities. NOAA line managers are very supportive of the Commissioned Corps because these officers bring not only key technical skills, but heightened skills in operations, program needs, and management.

The Commissioned Corps is distinctively designed to meet the operational needs of NOAA (ships, aircraft and mobile duty) and to respond quickly to the emergent needs of the nation. Officers enter the Corps with the expectation that they will be separated from their families for long periods of time and will have to move their families often as a part of the Commissioned Corps' rotational assignment system. This continual rotation of officers provides for transfer of ideas throughout NOAA components. It has served NOAA and the nation very well, and should continue to do so into the 21st century. This rotational system, which has many of the positive attributes of the Senior Executive Service, is not limited to the executive level, but spans the entire breadth of NOAA—from an officer in charge of a field hydrographic survey launch, to a commander of a hurricane research aircraft, to the director of the National Geodetic Survey.

The Director of the NOAA Corps, a flag officer, has the capability to immediately direct transfers as required to meet national emergencies. A civilian, or privatized system would be more expensive and not as responsive to emergent requirements. Therefore, with the disestablishment of the Commissioned Corps, the nation would lose an important capability.

The Commissioned Corps' composition of scientists and engineers also provides a cadre of talented and technically competent officers who are intimately familiar with the operational needs of the organization. Many officers pursue advanced degrees, some attaining the doctorate level. Academic advancement is a factor in the Corps' "up or out" promotion system, i.e., as the percentage of officers becomes fewer at each senior grade, only the most talented advance, ensuring the highest quality support.

The Commissioned Corps also provides NOAA with officers who are multifaceted. In this respect, officers typically serve within multiple line components, similar to the Department of Defense's joint service commands. The multiplicity of assignments, therefore, engenders officers that are multifaceted, as well as extremely dedicated and loyal to NOAA and the nation. This talent pool has contributed significantly, not only to NOAA but to other agencies, as well as the international community. Examples are numerous, but include the current president of the International Hydrographic Office in Monaco, fellows in the American Geophysical Union, past presidents of various sections of prestigious scientific and professional societies, and acknowledged world experts in the areas of geodesy, photogrammetry, and hydrography.

#### NATIONAL INTERESTS

There are significant national interests, to include environmental safety and potential national security implications that must also be carefully examined and considered in evaluating any proposal to disband NOAA.

First, Commissioned Corps officers are subject to a legislative transfer provision similar to that of the United States Coast Guard and Public Health Service, where-

by the Corps' officers, ships, and equipment can be transferred immediately to the armed services in time of war and or national emergency. This legislative transfer provision was enacted to ensure that the nation could rapidly and efficiently tap the technical expertise of C&GS officers for the purpose of national defense. During World War II, officers served under assignment to the Army, Navy, and Marine Corps in all theaters of the war, often in the front lines or in enemy-held territory as artillery surveyors, amphibious engineers, hydrographers, geophysicists, reconnaissance specialists, and cartographers.

This contingent of officers received four Silver Star medals for gallantry under fire, seven Legion of Merit medals for exceptional technical contributions to the war effort, and numerous Bronze Star medals with Combat "V" for conducting surveys in enemy-held territory or while under fire. C&GS ships also received commendations for their role in charting the unknown waters of the western Pacific, often in advance of, and therefore unprotected by, fleet units.

Within the Navy, C&GS officers served as hydrographers throughout the western Pacific and were present at all major landings subsequent to Tarawa. As a direct result of difficulties encountered during the Tarawa landings, in which these officers had not been employed, Admiral Richmond Kelly Turner, chief of Naval amphibious forces in the Pacific, placed a C&GS officer in charge of all hydrographic operations associated with naval amphibious forces. A C&GS officer served as Force Hydrographer for the remainder of the war and directed the hydrographic efforts at Kwajalein, Peleliu, Saipan, Guam, Tinian, Iwo Jima, and Okinawa.

C&GS officers attached to the Marine Corps served primarily in two capacities, as either artillery surveyors or as intelligence officers, and they served in all major actions of the Pacific war. As artillery surveyors they often landed with the first wave to orient Marine artillery amidst the initial assault firestorm, and then carried their surveys forward—often beyond the front lines. After providing survey control for Marine artillery, they aided in locating enemy artillery. On Iwo Jima, for example, a C&GS officer determined the position of 16 Japanese guns that were subsequently destroyed. Because of the nature of the work, these officers were readily exposed to hostile fire and often referred to as "sniper bait."

The nation has since been fortunate to not have seen another conflict on the scale of World War II and the need to directly transfer NOAA Corps officers to one of their sister services has, therefore, not arisen. Nevertheless, the NOAA Corps has continued to make vital contributions during national emergencies.

Today's threat includes not only military, but environmental threats as recently announced by the State Department. When the *Exxon Valdez* oil spill occurred, NOAA Corps officers, working with the Coast Guard, were heavily involved both ashore and at sea by operating NOAA ships that conducted environmental surveys of the area around the spill.

During Operation Desert Storm, Iraq created some of the worst oil-field fires and oil spills in history. The Commissioned Corps served with the armed forces during both Operation Desert Shield and Operation Desert Storm. NOAA provided ship and technical expertise for environmental appraisal, and the first comprehensive study of the Persian Gulf. NOAA Corps officers ashore provided scientific expertise in hazardous-materials management, leading shore parties and conducting surveys of oil-related damage to beaches and tidal areas.

The NOAA Ship *MT Mitchell* carried a contingent of world-class scientists to the Persian Gulf to evaluate and determine the extent of the environmental damage. Prior to sailing, the uniformed service status of the officers allowed for immediate access to critical and classified information such as mine threat, and other military risk assessments. As a U.S. Government vessel commissioned in the public service, commanded by uniformed service members, and with sovereign status, *MT Mitchell* easily bypassed the routine restrictions placed upon commercial and civilian research vessels. This status provided instant credibility in dealing with the on-site commanders of several Persian Gulf nations, where port security and logistics are controlled by military services. Research operations around several critical islands, controlled by these countries' military services, required negotiations between NOAA Corps officers and the local commanders.

While operating in the Persian Gulf, *MT Mitchell* maintained close communications with other U.S. forces, both as a safety measure and to ensure smooth logistics through the military. The *MT Mitchell* was the first U.S. Government ship to operate in Iranian waters in over 13 years. Although subject to occasional challenges by Iranian warships, the warship status and uniformed service command ensured recognition of *MT Mitchell's* sovereign status and prompt acknowledgment of support for the mission. Both the Iranian scientists and Iranian naval observers on board *MT Mitchell* commented that such operations would have never been possible on a civilian research ship, and provided anecdotal information on the earlier failure of

such efforts involving civilians and non-government ships. The NOAA Corps uniform was also accorded instant credibility by Saudi Arabian, Kuwaiti, and Iranian authorities and observers. Most importantly, the skills and knowledge of the NOAA Corps officers maximized the productivity of this scientific expedition by providing a safe, effective research platform, and a means to collect critical data. The captain and crew of this expedition received a Commerce Gold and Silver Medals, respectively, for their service.

A more recent example of the continued vital importance of the NOAA commissioned corps is the NOAA Ship *Rude*, which located the wreckage of TWA Flight 800 within 24 hours of the crash. The *Rude* and a shore component, composed of NOAA Corps officers, created highly detailed map products that greatly facilitated the retrieval of wreckage by Navy divers. The efforts of these Commissioned Corps officers was recently recognized by Secretary Peña of the Department of Transportation at a United States Coast Guard Awards Ceremony with a Public Service Commendation and by NOAA's parent bureau, the Department of Commerce, with the Department's highest award—the Commerce Gold Medal.

In summary, the Commissioned Corps continues to be recognized for technical competence, leadership, and devotion to duty—even under the most difficult conditions. The Corps provides “instant government recognition” and excellent interface to their fellow uniformed services. In addition, the Corps has a code of dress/appearance, readily gaining trust and respect, and providing NOAA and the nation with a needed “service to service” interface. The Corps is subject to transfer to the military services on immediate notice and has served, or is serving, in interface assignments with the Coast Guard, Defense Mapping Agency, Oceanographer of the Navy, Naval Meteorology and Oceanography Command, and occasionally with foreign offices. In my opinion, the nation would lose an extremely valuable asset if the Commissioned Corps were eliminated. As Vice President Gore stated in a letter to the Commissioned Corps on its 1994 anniversary:

“The NOAA Corps has provided valuable support to the other uniformed services in times of war and will continue to play an important role in supporting safe navigation, sustaining the health and harvests of our oceans, and providing advance warnings of hazardous weather conditions. As the Corps looks to the future, there will be many opportunities to utilize advanced technologies and alternative platforms and to develop new and innovative ways of operating. I am sure that the flexibility and adaptability that the Corps has demonstrated in the past will serve it well in the years to come.”

#### COST SAVINGS

The last point is the projected cost savings from eliminating the NOAA Corps—the cost savings are minimal or non-existent. The asserted basis for dissolution is the mistaken belief that savings can be garnered through the privatization and civilianization of the Commissioned Corps. Simply stated, the original proposal to eliminate the Commissioned Corps was, unfortunately, not based on a thorough economic analysis.

When the NOAA administrator announced his intentions to eliminate the NOAA Corps, a General Accounting Office study requested by Representative Kasich was underway and nearing completion. The only cost study available at that time, in fact, showed that the NOAA Corps was actually less costly than an equivalent civil service work force. This study, prepared by Arthur Andersen & Co. under a contract initiated by the administrator's office, showed that the NOAA Corps was about \$500,000 less expensive than its civilian counterparts. Clearly, NOAA'S decision to eliminate the NOAA Corps was not based on economics, but simply politics, i.e., to comply with the Vice President's National Performance Review recommendation to eliminate the NOAA Corps with a projected cost savings of \$35 million.

The subsequent GAO report (GAO-GGD-97-10, “Federal Personnel Issues: Issues on the Need for NOAA's Commissioned Corps”) found only a 2 percent or about \$600,000 cost differential between the Corps and an equivalent cadre of civil servants. The GAO's cost comparison did not, however, include either the overtime costs of using civilian aircraft pilots versus NOAA Corps pilots who do not earn overtime or the increased cost of moving a civilian as noted in the study conducted by Arthur Andersen. In particular, moving a member of the uniformed services entails less than one-third the cost of moving a civilian. Therefore, when moving costs are considered, the cost benefit tilts in favor of the NOAA commissioned officer.

There are also environmental issues. NOAA Corps officers are the only group of uniformed federal hydrographers in the nation. NOAA's nautical charts are highly regarded by the maritime community. The loss of the hydrographic expertise at NOAA could, therefore, jeopardize the nation's ability to conduct overseas military

operations from the sea, as previously discussed. In addition, the loss of this hydrographic expertise could jeopardize the environment and safety of our coastal waterways through which most of our international trade is conducted.

Any purported savings realized through eliminating the Commissioned Corps would potentially be more than offset by the loss of the Commissioned Corps' capacity for rapid response to prevent catastrophic environmental accidents, such as the grounding of an oil tanker on an uncharted rock. Mobility and rapid response—attributes displayed during Operation Desert Shield/Desert Storm, the *Exxon Valdez* disaster and the crash of TWA flight 800—reflect the value of uniformed-service status to the nation.

As NOAA looks to increase reliance on private contractors and outsource hydrographic surveys, there is the issue of tort liability for any private civilian organization providing hydrographic surveys for use in creating U.S. government nautical charts. In particular, it is extremely doubtful that a private entity could obtain catastrophic insurance from another commercial entity for liability against a suit arising from the grounding of a cruise ship on an uncharted rock or an environmental catastrophe such as *Exxon Valdez* that resulted from deficiencies in nautical charts. As a result, the federal government would in all probability have to assume such liability. Given the foregoing, privatization of the national charting program must be carefully considered and explored in-depth to ensure that increased costs are not incurred as a result of privatization.

As currently presented in the proposed fiscal year 1998 budget, the apparent "cost" of eliminating the NOAA Corps is only \$6 million more than the fiscal year 1997 retired pay line item of \$8 million, or a total cost of \$14 million. However, in reality, the total cost is much higher. In addition to the \$14 million currently budgeted for elimination, are the retirement pay for current retirees and the retirement pay for those officers who would be forced to retire if the Corps is eliminated. These additional retirement pay costs are estimated to be in excess of \$10 million annually; this is an unfunded liability that does not appear in the proposed fiscal year 1998 NOAA budget.

Simply stated, for no increase in costs, the Commissioned Corps provides the nation with a cadre of highly professional and dedicated women and men who serve in a multitude of ways. Without the Corps, the nation will suffer over the long run. Furthermore, when we again find we need the Corps, it will take years to get it back, at an even higher cost, perhaps at the cost of lives.

If all the costs of elimination are fairly considered, there is a significant savings in keeping the NOAA Corps that has served the nation faithfully for decades. Clearly, the potential cost savings from eliminating the NOAA Corps is nonexistent. The short-sighted reasoning of the Administration in eliminating the NOAA Corps could have an adverse impact on the environment and potentially impair our national security in time of crisis.

#### SUMMARY

In closing, any proposal to eliminate the Commissioned Corps must carefully examine the potential risks to the nation from the loss of the Corps and its technical expertise. Dissolution should not be permitted to proceed without a verifiable plan for how NOAA plans to continue providing services to the nation, such as nautical charting, without added cost to the taxpayer. This plan should be especially specific in the area of hydrographic surveys, where private contractors may not accept tort liability for their surveys or agree to conduct surveys in remote areas such as Alaska or in times of national emergency with the other uniformed services. In short, the outstanding service the NOAA Corps provides to the nation and the fact that there will be virtually no savings in its dissolution must lead to the retention of the Commissioned Corps.

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PREPARED STATEMENT OF BETH MARKS CLARK, DIRECTOR, THE ANTARCTICA PROJECT

#### INTRODUCTION

Thank you for the opportunity to submit testimony today on the fiscal year 1998 budget for the Department of Commerce, and specifically, the Antarctic Marine Living Resources (AMLR) Program of the National Oceanic and Atmospheric Administration (NOAA). I am Beth Marks Clark,<sup>1</sup> Director of The Antarctica Project. The following organizations join with me in supporting an appropriation of at least \$1.2

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<sup>1</sup>Public sector representative on the U.S. delegation to the meetings of the Convention on the Conservation of Antarctic Marine Living Resources, 1990-present.

million to support the Antarctic Marine Living Resources Program (AMLR), NOAA's directed research program in Antarctica: Center for Marine Conservation, Defenders of Wildlife, Environmental Defense Fund, Friends of the Earth, Greenpeace, The Humane Society of the U.S., Humane Society International, National Audubon Society, National Parks and Conservation Association, National Wildlife Federation, Natural Resources Defense Council, Sierra Club, and World Wildlife Fund. An appropriation of \$1.2 million is the level at which AMLR has been funded for the past five fiscal years.

AMLR has always enjoyed bipartisan Congressional support. In fact, it was due to the efforts of Congress that funding for AMLR has been available since its inception in 1986. Our organizations urge your Committee to ensure that continued funding is available.<sup>2</sup>

Until it was taken off line in 1995, the AMLR Program was supported by the NOAA ship, *R.V. Surveyor*. Two years ago, NOAA contracted a Russian ship to support AMLR. NOAA will again need to charter a ship to support AMLR for the coming season, and will require up to \$2 million for this charter. We urge your Committee to ensure that funds are available for this charter.

Thus, a \$1.2 million appropriation is sufficient if there is funding within the National Marine Fisheries Service budget to charter a ship to support AMLR. However, if there are insufficient funds, then additional funds would be needed to charter a vessel. Obviously, without a vessel, AMLR cannot continue its research program.

The Antarctic Marine Living Resources Program is vital to longstanding U.S. economic, environmental and political interests in Antarctica, and supports our international obligations to the Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR).

#### BACKGROUND ON CCAMLR

CCAMLR was established under the Antarctic Treaty System to provide a management system that would both protect the ecosystem and allow fishing activities in the Southern Ocean. It is unique among fisheries agreements in that measures must be agreed which consider the impact of a fishery on the entire ecosystem, rather than on just the harvested species. CCAMLR is thus the first international convention to address ecosystem management goals.

The Convention entered into force in 1982, and established an advisory Scientific Committee and a regulatory Commission with authority to impose restrictions on commercial fishing operations. To date 22 nations and the European Community<sup>3</sup> have agreed to subject their fishing activities to regulation under the Convention. The Convention requires consensus decision-making, which means that all nations must approve each measure agreed on to prevent overharvesting. Barring consensus, fisheries could proceed without regulation.

The only way that the fishing nations will agree to and comply with conservation measures that limit fisheries to ecologically sustainable levels is if they are presented with scientific proof of a fishery's status. Thus, for CCAMLR to remain effective, nations need to continue funding research programs that generate the data to support these measures.

Research results from the Antarctic Marine Living Resources Program have provided this information. Since its inception, this U.S. program has been critical to CCAMLR's success because it has provided the scientific foundation for the adoption of ecologically-sound conservation measures by CCAMLR member governments. The U.S. is therefore able to be proactive in promoting measures aimed at safeguarding the ecosystem.

#### THE ANTARCTIC MARINE LIVING RESOURCES PROGRAM

Through AMLR, the U.S. has played a leading role in identifying and brokering internationally acceptable approaches to conservation problems in the Southern Ocean. The ability of the U.S. to influence long-term international conservation efforts stems from our leading by example—both in Southern Ocean conservation and

<sup>2</sup>From fiscal year 1987 through fiscal year 1993, funding for AMLR was not included in the President's annual budget request. Funding was provided by Congressional add-ons to NOAA's budget. Fortunately, due to the foresight of Congress, AMLR remained a viable program despite attempts to cut it. I am sure that this allowed it to be included in the President's budget request, starting with the fiscal year 1994 budget.

<sup>3</sup>The following nations are members of CCAMLR: Argentina, Australia, Belgium, Brazil, Chile, European Community, France, Germany, India, Italy, Japan, Republic of Korea, New Zealand, Norway, Poland, Russian Federation, South Africa, Spain, Sweden, Ukraine, United Kingdom, United States and Uruguay.

in the larger framework of the Antarctic Treaty System. A U.S. presence is especially important now that U.S. fishers have initiated Southern Ocean fisheries. Decreasing the U.S. research effort while increasing U.S. fishing in the region could undermine U.S. leadership in Antarctica, and could jeopardize the continuing success of CCAMLR.

During the last two years, nations have begun to bow to domestic economic pressures at the expense of conservation, and have attempted to gain consensus for catch levels which were economically beneficial, without regard to the state of the fishery. At present, the principal fishing nations are Argentina, Chile, Japan, Russia and the Ukraine. During the last year, new fisheries have been proposed by Australia, Korea, New Zealand, Norway, South Africa, and the UK.

Research results from AMLR have allowed the U.S. delegation to argue persuasively that conservation measures be based on science rather than economics. Without a strong U.S. research presence, Southern Ocean fisheries will be regulated by nations with a strong economic interest and presence in the region. Under such circumstances we fear that implementation of conservation measures will be difficult, overfishing will persist, and the region's marine living resources will be exploited beyond sustainable levels.

By helping to effectively implement CCAMLR, AMLR also provides a model for ecosystem management of domestic and international fisheries. CCAMLR was launched as an experiment to determine if nations could design new ways to govern fisheries that would avoid ecological and subsequent economic catastrophe. The Large Marine Ecosystem experiments carried out by the National Marine Fisheries Service stemmed directly from the CCAMLR experience in the Southern Ocean.

The U.N. Food and Agriculture Organization has warned that "fish production from most of the world's fisheries has reached or exceeded the levels at which fish stocks can regenerate themselves."<sup>4</sup> As we see fisheries around the world continuing to collapse, with consequent economic and diplomatic implications, it is clear that the "ecosystem as a whole" model initiated by Antarctic research needs to be extrapolated to all fisheries.

#### BACKGROUND ON ANTARCTIC FISHERIES

Commercial harvesting of Antarctic fish began in the early 1970's. By 1976, several nations had launched commercial harvesting operations for krill, the one- to two-inch long shrimp-like crustacean that forms the basis of the Antarctic food chain. CCAMLR was negotiated in response to the collapse of several species of fish from unregulated fisheries, and the concern that a rapid escalation of a krill fishery could precipitate the demise of the Southern Ocean marine ecosystem. Because of krill's pivotal role in the food chain, an unregulated fishery could also impede the recovery of whale populations.

Krill fishing peaked in the early 1980's, and is currently at its lowest level.<sup>5</sup> The decrease in recent years is primarily due to the break up of the Soviet Union, and the decline in Russia's krill fishery. Even in the 1980's, krill catches remained relatively low. This was primarily attributed to palatability problems caused by high fluoride concentrations in the exoskeleton. Technology is currently available to overcome this problem, and recently there has been renewed interest in this fishery.

In addition to krill, in recent years three species have been targeted by commercial fisheries: Patagonian toothfish or black hake, Mackerel icefish, and crabs. In the 1996/97 season, a new fishery on squid was opened. Fisheries have been open on several additional species (lanternfish and grey notothenids); however, economic factors have not permitted commercial ventures to proceed. Southern fisheries have been primarily concentrated in the Atlantic sector of the Southern Ocean; however, the last CCAMLR meeting opened most of the remainder of the Southern Ocean to toothfish fisheries.

#### IMPORTANCE OF CCAMLR AND THE U.S. ANTARCTIC MARINE LIVING RESOURCES PROGRAM

Proper implementation of CCAMLR is necessary to ensure the wise and sustainable use of Southern Ocean fisheries. The Antarctic Marine Living Resources Program is essential for the proper implementation of CCAMLR because research results have provided the foundation for the adoption of ecologically sound conservation measures by CCAMLR.

<sup>4</sup> Committee on Fisheries, U.N. Food and Agriculture Organization, March 1993 meeting.

<sup>5</sup> In the 1981/82 season, 528,201 tonnes were caught; in 1994/95, 118,714 tonnes were caught; in 1995/96 95,040 tonnes were caught.

To give effect to the Convention domestically, and to ensure the acquisition of the requisite scientific information, Congress enacted the Antarctic Marine Living Resources Convention Act of 1984.<sup>6</sup> This act directed NOAA to develop and implement a research program to support and facilitate implementation of CCAMLR. This program, the U.S. AMLR Program, has been implemented by NOAA's National Marine Fisheries Service since 1987, when Congress approved the Program Development Plan.<sup>7</sup>

The U.S. AMLR Program was the first national research program to investigate the state of the fish stocks in the Southern Ocean. The first AMLR cruise confirmed that fishing operations were having adverse impacts on marine life, and indicated that several fish stocks were being exploited at rates above those levels which allow replacement of the stock. Several species had been so heavily fished that their populations were less than 10 percent of their size in 1982.<sup>8</sup>

The importance of CCAMLR and the U.S. AMLR Program is in their ability, over a decade's time, to monitor changes in the Southern Ocean ecosystem. Whether fluctuations in the marine environment, including changes in marine populations, can be attributed to human or natural events, can only be determined by research which continues over a long period of time.

Results from the past few years are illustrative.

One, the survival of krill predators (seals and penguins) is a good indication of the availability of krill. Since 1990, the survival of young penguins and seals has fluctuated. Although the krill harvest is at its lowest level, the availability of krill to its predators has fluctuated, as evidenced by the annual survival rate of penguin chicks.<sup>9</sup>

Whether these changes are the result of natural fluctuations or due to the location and timing of the krill fishery is still not fully understood. An article in *Nature*<sup>10</sup> reports that juvenile Emperor penguins forage further north than previously believed. This appears to bring these penguins into commercial fishing areas, raising the potential for competition.

However, these results highlight the challenges facing CCAMLR, and the need for continued research: to establish a relation between changes in the marine ecosystem and external (human-induced) vs. natural impacts, and to determine what is over-fishing.

Two, a healthy krill population is also essential for the recovery of some depleted fish stocks. The AMLR Program initiated the first ecosystem monitoring program which studied the relationships between krill, their predators, and their environment. Research results led CCAMLR to adopt a precautionary catch limit on krill fishing. The U.S. is the only nation which is consistently conducting these studies.<sup>11</sup>

Three, there is much uncertainty over the status of krill stocks in some sectors in the Southern Ocean, and some evidence that krill recruitment might actually be decreasing. Based on a U.S. proposal, CCAMLR placed a high priority on undertaking a new synoptic krill survey. The U.S. is organizing this effort.

Four, in response to a U.S. fisherman applying for a permit to initiate a crab fishery in the Southern Ocean, the U.S. took the lead in ensuring that the fishery was developed using a conservative approach by developing a model research and development plan. In developing this plan, the fisherman was consulted, along with biologists and fishery management specialists. The crab fishery was used as an example of how to manage a new fishery, and set a precedent for other new and developing fisheries.

Based on the U.S. example, measures were adopted which defined "new" and "exploratory" fisheries and articulated procedures for conducting them. At the last

<sup>6</sup>The Antarctic Marine Living Resources Conservation Act of 1984 (Public Law 98-623).

<sup>7</sup>The Program Development Plan recommended annual funding of AMLR at the \$4 million level, including \$1.8 million for the charter of a dedicated research vessel.

<sup>8</sup>Because these early studies confirmed low standing stocks of fish, the traditional harvesting areas surrounding the South Shetland and South Orkney Islands in the Southern Atlantic Ocean were closed to finfishing. Attempts to reopen these areas have not been successful. However, unless fish stock surveys are completed in the future, we could lose the agreement to keep these areas closed. It will only be due to the consistent and vigilant application of the results of the research cruises that consensus will be maintained to prohibit or limit fishing in these and other areas.

<sup>9</sup>Anderson, Ian. Penguins move out after chicks starve to death. *New Scientist*. Vol. 145, no. 1962, p. 9. January 28, 1995.

<sup>10</sup>Kooyman, G.L., et al. Penguin dispersal after fledging. *Nature*, vol. 383, 3 October 1996.

<sup>11</sup>Review of the United States Antarctic Marine Living Resources (AMLR) Research Program, 27-29 May 1992, La Jolla, CA (Dr. Robert J. Hofman, Marine Mammal Commission, Chairman). This interagency review panel noted that "AMLR is focussed on tasks that are essential to meeting the ecosystem-oriented objectives of CCAMLR, \* \* \* and are not being done by other Parties."

CCAMLR meeting, the U.S. secured agreement for the need for a measure which articulates the procedure to be followed when resuming a fishery for which there is no data upon which to base a sustainable catch limit. These measures are necessary to assure that fisheries develop slowly and in concert with the acquisition of biological and demographic data. Prior to this, fisheries were allowed to develop until the resource was depleted.

Five, one of the biggest obstacles to the adoption of conservation measures is lack of data submission. Without this data, the Scientific Committee is unable to provide the best scientific advice on the state of a fishery or fish stock. Without data to back up claims of overfishing, fishing nations can attempt to increase allowable catches, and open previously-closed areas to fishing.

To help overcome this, personnel from the U.S. AMLR Program implemented the CCAMLR Scientific Observer program by placing an observer on board a Russian vessel. Observers enable compliance monitoring with the conservation measures adopted by the CCAMLR Commission. They provide verification of the fish species caught, fishing methods used, catch data, and accurate and timely reporting to the CCAMLR Secretariat.

Six, U.S. AMLR personnel also initiated the CCAMLR Inspection Program of commercial boats in the 1990/1991 season with the boarding of a Japanese vessel, and have carried out additional inspections during the past seasons. This set a precedent for other countries.<sup>12</sup>

Seven, during the past two years, there has been a significant illegal fishery occurring on the Patagonian toothfish. Prior to last year, nations were unable to censure those flag states because of the narrow definition of fishing which specified that a boat had to be observed actually fishing on a closed fishery for an inspector to report a violation. The U.S. was successful in getting nations to agree to broaden this definition to give inspectors greater latitude in determining whether an infringement of a conservation measure has occurred when inspecting a research or fishing vessel. The U.S. had hoped that nations would agree to placing satellite-linked vessel monitoring systems (VMS) on their boats. These systems have proved successful in ensuring compliance with conservation measures in domestic fisheries, because a boat's location is automatically conveyed to a central computer. Nations agreed to voluntary placement of VMS on board their vessels, and have agreed to discuss mandatory placement at this year's meeting.

#### U.S. ECONOMIC INTERESTS

As fisheries around the world have become depleted, over the past two years there has been a huge resurgence in interest in Southern Ocean fisheries. It is believed that the Southern Ocean is the "last remaining major source of marine protein, [and this will lead to] considerable harvesting activity in the Southern Ocean, which will require, if it is to have a chance of being sustainable, a massive extension of current ecological research \* \* \*"<sup>13</sup>

As mentioned above, the U.S., through AMLR, has been successful in achieving agreement on conservation measures designed to ensure the long-term sustainability of the marine resources of the Southern Ocean, and has taken the lead in developing monitoring programs, primarily through the CCAMLR Ecosystem Monitoring Program. For example, the measure designed to ensure that new fisheries did not develop ahead of the collection of biological and demographic data was instigated by the U.S.

However, it is clear that for the underdeveloped marine resources, it is in the best interest of U.S. fishers to understand as clearly as possible what the status of that resource might be, so that the resource can be managed sustainably over the long term. In this way U.S. fishers can make informed decisions about the potential for future participation in Southern Ocean fisheries. Thus, a continued U.S. presence in Antarctic marine resources research will ensure both an ecological and economic benefit to U.S. fishers.

This has already been demonstrated by the initiation of the crab fishery by an Alaskan fisherman. The presence of the U.S. at the meetings of CCAMLR were critical to ensuring that the interests of this fisherman were properly represented.

As noted above, the research conducted through AMLR could generate valuable lessons for managing U.S. domestic fisheries. Viewed from this perspective, the very small investments being made in Antarctic research can pay handsome dividends.

<sup>12</sup>The CCAMLR Inspection Program seeks to measure compliance with CCAMLR conservation measures by allowing for unannounced checks of commercial boats which are engaged in harvesting activities.

<sup>13</sup>Drewry, D.J. 1993. The future of Antarctic scientific research, *Polar Record* 29:37-44.

## U.S. POLITICAL INTERESTS

In the U.S. view, Antarctica is owned by no one. It is governed by the Antarctic Treaty System, a collection of international treaties which set policy and articulate permitted activities in the Antarctic region for those governments that are members. Central to the Antarctic Treaty System is the Antarctic Treaty, which entered into force in 1961. Its primary purpose is to ensure that Antarctica will be used exclusively for peaceful purposes. To this end, the Treaty provides for the freedom of scientific research, promotes international cooperation towards this goal, and, most importantly for CCAMLR, freezes all territorial claims.

Seven nations claim sovereignty over territory in Antarctica (Argentina, Australia, Chile, France, New Zealand, Norway and the United Kingdom; the claims of Argentina, Chile and the UK overlap). The U.S. and Russia reserve their rights to assert claims in the continent. By freezing these claims, the Antarctic Treaty ensured that scientific research could proceed anywhere on the continent.

With the break up of the Soviet Union, and the reduction in the Russian Antarctic Program, the U.S. has become the principal non-claimant nation with a substantial presence in Antarctica. Thus, if a claimant nation tried to act on its claim, the U.S. might be the only country which could effectively challenge this action. This is especially true in the waters surrounding Antarctica. As long as claims are frozen, these waters are open to all fishers (provided they abide by CCAMLR's regulations).

A decreased U.S. presence and involvement could alter this fragile balance and open up the possibility of claimant nations declaring 200 mile exclusive economic zones (EEZ's) in these waters, thus limiting access to the viable fisheries to fishers from the U.S. and other nations.

## FISCAL YEAR 1998 APPROPRIATION REQUEST

Although the AMLR Program is vital to U.S. interests in Antarctica, and to the sustainable management and geopolitical stability of Southern Ocean fisheries, it had been constrained by funding limitations since its inception. Congress originally recommended funding the Program at \$4 million annually; this included \$1.8 million to charter a research vessel. AMLR has never been funded near this level.

*AMLR Funding Levels*

	<i>In millions</i>
Fiscal year:	
1987 .....	<sup>1</sup> \$1.8
1988 .....	<sup>1</sup> 1.5
1989 .....	<sup>2</sup> 1.3
1990 .....	<sup>2</sup> 1.3
1991 .....	<sup>2</sup> 1.3
1992 .....	<sup>2</sup> 1.275
1993 .....	<sup>2</sup> 1.2
1994 .....	<sup>2</sup> 1.2
1995 .....	<sup>2</sup> 1.2
1996 .....	<sup>3</sup> 1.2
1997 .....	<sup>3</sup> 1.2
1998 .....	<sup>4</sup> 1.2

<sup>1</sup> Included contracting the Polish vessel, *Professor Svedlecki*.

<sup>2</sup> Use of NOAA's ship *Surveyor*.

<sup>3</sup> Charter of Russian vessel.

<sup>4</sup> Requested; assumes availability of charter funds.

*Fiscal Year 1998 Appropriation Request*

For fiscal year 1998, level funding of \$1.2 million will be needed to continue the principle research components of the U.S. AMLR Program. Funding will allow the continuation of both the land-based and ship-based research programs. The land-based ecosystem monitoring program monitors the reproduction and foraging behavior of the primary mammalian and avian krill predators, while the ship-based studies monitor the physical oceanography and spatial distribution and abundance of krill in the Southern Ocean contiguous with, and extending beyond, the land-based site.

As indicated above, when the R.V. *Surveyor* was taken off line, NOAA chartered a Russian ship to support the AMLR Program. NOAA will again be contracting for a ship to support AMLR for the coming season, and will require up to \$2 million for this charter. If these funds are not available within the National Marine Fisheries Service budget, then additional funds would be needed to charter a vessel. We urge you to ensure that money is available for this charter.

## CONCLUSION

CCAMLR was launched as an experiment to determine if nations could govern fisheries to avoid ecological and subsequent economic catastrophe. By helping to effectively implement CCAMLR, AMLR provides a model for ecosystem management of domestic and international fisheries.

As fish stocks have decreased globally, economic pressures have begun to compel nations to increase fishing in the Southern Ocean. Without continued scientific effort to judge proposals for fishing, the same problems could emerge in the Southern Ocean that are occurring in other regions of the world.

The results of the research undertaken through NOAA's Antarctic Marine Living Resources Program have enabled the U.S. to argue persuasively for the adoption of conservation measures aimed at limiting the harvesting of exploited species. Without a strong U.S. research presence, Southern Ocean fisheries will be regulated by nations with a strong economic interest and presence in the region. Further, implementation of conservation measures will be difficult, overfishing will persist, and the marine living resources will be exploited beyond sustainable levels.

Continued funding of the Antarctic Marine Living Resources Program will protect the lead role that the U.S. has played over the past thirty-five years, in the Antarctic Treaty and in the Antarctic Treaty System, in developing ecologically sound and internationally acceptable approaches to Antarctic issues.

Continuing to fulfill our obligations under CCAMLR will send a strong message about our desire to maintain the Antarctic as a region dedicated to science and other peaceful uses, and to minimize harm to the environment. It will allow the continued stability with regard to claims in the region. It will reflect positively on our commitment to the Antarctic Treaty System, and will preserve the leadership role of the United States in marine living resources research. In addition, now that the United States has become a fishing nation, it is especially important for us to maintain credibility. This is not the time for the U.S. to decrease its research efforts.

The AMLR Program has encouraged collaboration with scientists of many nations. Politically, this cooperation enhances U.S. interactions in other international fora, in addition to CCAMLR and the Antarctic Treaty System.

While we recognize that Congress must make difficult budget decisions, it is important not to underestimate the value of the U.S. AMLR Program. The modest allocation of funds that is being requested for investment in Antarctic marine research will go a long way toward addressing critical environmental and political issues that the United States faces in Antarctica. For future generations, investing in this cost-effective program will be more important than the modest savings gained through its elimination.

For these reasons, we respectfully request this Subcommittee to approve an appropriation of \$1.2 million to support NOAA's Antarctic Marine Living Resources Program.

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PREPARED STATEMENT OF THE INDIGENOUS PEOPLE'S COUNCIL FOR MARINE  
MAMMALS

Mr. Chairman, Members of Commerce, Justice, State, Judiciary, and Related Agencies, and the Senate Subcommittee on the Appropriations. On behalf of the Alaska Native Community, the Indigenous People's Council for Marine Mammals (IPCoMM) is requesting the Senate Subcommittee of the Appropriations Committee to appropriate, for fiscal year 1998, the authorized levels of: \$1.5 million to the Secretary of Commerce to implement Section 119 of Public Law 103-238, 1994 Amendments to the Marine Mammal Protection Act (MMPA). Section 119 authorizes the Secretary of Commerce to " \* \* \* enter into cooperative agreements with Alaska Native Organizations to conserve marine mammals and provide co-management of subsistence use by Alaska Natives." It also authorizes Congress to appropriate funds to implement Section 119. Unfortunately, no funds have been appropriated to the Department of Commerce since Section 119 was added to the MMPA in 1994. In fact the only funding provided since 1994 was a \$250,000 congressional add-on to the Department of the Interior's fiscal year 1997 budget which allowed U.S. Fish and Wildlife Service (USFWS) to enter into co-management agreements with Alaska Native Organizations for conservation and subsistence use of walrus, polar bears and sea otters.

Despite the lack of funding, significant progress has been made in Alaska in terms of implementing Section 119 of the MMPA. The Alaska Native Community, represented by IPCoMM, the Alaska Federation of Natives (AFN), and the Alaska Inter-Tribal Council (AI-TC) recently completed negotiations on an umbrella "Memorandum of Agreement for Negotiation of Marine Mammal Protection Act Section 119

Agreements” to conserve marine mammals and provide co-management of subsistence use with the Department of the Interior—Fish and Wildlife Service. Final negotiations with the Department of Commerce—National Marine Fisheries Service (NMFS) are expected to be completed on March 20, 1997. This umbrella agreement between IPCoMM and NMFS will provide the foundation and direction for how individual co-management agreements will be negotiated between the federal agencies and Alaska Native Organizations for the nine (9) species under NMFS jurisdiction. The parties are in the process of planning a formal signing ceremony to commemorate the historic agreement which will enhance the conservation and utilization of the marine mammal resources for subsistence uses consistent with the public policy embodied in Section 119 of MMPA. In addition to the successful negotiations with NMFS and USFWS on the umbrella agreement, three marine mammal Commissions (Eskimo Walrus Commission, the Alaska Nanuq Commission and the Alaska Sea Otter Commission) recently signed individual co-management agreements with USFWS for specific co-management agreement activities involving three species used for subsistence purposes in Alaska (walrus, polar bear and sea otters). These Agreements were made possible due to the \$250,000 appropriation to the Department of the Interior for fiscal year 1997.

Although significant progress has been made in implementing Section 119 of the MMPA, it is imperative that Congress fully fund Section 119 of the MMPA if this progress is to continue for the twelve (12) marine mammal species used by Alaska Natives. Congress has recognized that the best way to conserve and wisely utilize marine mammal resources used for subsistence purposes is to allow the full and equal participation by Alaska Natives in decisions affecting the management of marine mammals taken for subsistence. That can only happen if Congress provides adequate funding for co-management activities.

*Background.*—Early in the discussions leading to the 1994 reauthorization of the MMPA, a number of Alaska Native marine mammal groups banded together and formed IPCoMM to insure a united Native voice during the reauthorization process. As a result, the Native exemption for taking of marine mammals for subsistence uses was retained, and language was added in Section 119 to authorize the Secretaries of the Department of Commerce and Interior to enter into co-management agreements with Alaska Native Organizations for the conservation and co-management of subsistence uses of marine mammals.

In the spring of 1994, Congress enacted Public Law 103–238, the 1994 amendments to the MMPA. In doing so, Congress expressed its intent that the Secretary of Commerce and the Secretary of the Interior extend full cooperation as partners to Alaska Native Organizations in the development and implementation of marine mammal management plans. In order to insure proper implementation of Section 119, the Alaska Native Community requested that NMFS and USFWS work with IPCoMM in the development of an “Umbrella” Agreement with specific language that the federal agencies would consider when developing individual co-management agreements with Alaska Native Tribes and organizations pursuant to Section 119. The purpose of the umbrella agreement is to provide the direction and foundation for individual co-management Agreements. It will serve as a guide to USFWS, NMFS and Biological Resources Division, Geological Survey when these federal agencies enter into individual agreements with Alaska Native Organizations or Alaska Native Tribes for the co-management of subsistence use of marine mammals.

At this time, IPCoMM is concerned about all marine mammals which are utilized by Alaska Natives; however, harvest limitations are allowed and discussions have taken place concerning three listed species for which we have grave concern: bowhead whale (endangered); North Pacific Fur Seal (threatened); Steller Sea Lion (threatened).

The Alaska Native Community stands ready to work with NMFS and USFWS in implementing Section 119 of Public Law 103–238 to its fullest extent. It has already made significant progress toward that end. While Section 119 provides an effective way for Alaska Natives to participate in decisions affecting the management of marine mammals taken for subsistence, full realization of that goal will not be possible unless Congress provides adequate funding for co-management agreements. For that reason, we urge this Committee to appropriate the full \$1.5 million to the Department of Commerce to enable it to enter into individual co-management agreements pursuant to Section 119 of the MMPA. We trust that our request will be given due consideration during the deliberations of the Committee.

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